

Jury Trial - Preliminaries/Sandoval Ruling

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK - CRIMINAL TERM - PART: 59

- - - - - X

THE PEOPLE OF THE STATE OF NEW YORK,

Indict. No.
71543-2023

-against-
DONALD J. TRUMP,

CHARGE

FALSIFYING BUSINESS
RECORDS 1ST DEGREE

DEFENDANT.

JURY TRIAL

- - - - - X

100 Centre Street
New York, New York 10013
April 22, 2024

B E F O R E:

HONORABLE JUAN M. MERCHAN
JUSTICE OF THE SUPREME COURT

A P P E A R A N C E S:

FOR THE PEOPLE:

ALVIN BRAGG, JR., ESQ.
DISTRICT ATTORNEY, NEW YORK COUNTY
One Hogan Place
New York, New York 10013

BY: JOSHUA STEINGLASS, ESQ.
MATTHEW COLANGELO, ESQ.
SUSAN HOFFINGER, ESQ.
CHRISTOPHER CONROY, ESQ.
BECKY MANGOLD, ESQ.
KATHERINE ELLIS, ESQ.
Assistant District Attorneys

BLANCHE LAW

BY: TODD BLANCHE, ESQ.
EMIL BOVE, ESQ.

NECHELES LAW, LLP

BY: SUSAN NECHELES, ESQ.
GEDALIA M. STERN, ESQ.
Attorneys for the Defendant

SUSAN PEARCE-BATES, RPR, CSR, RSA
Principal Court Reporter
LAURIE EISENBERG, RPR, CSR
LISA KRAMSKY
THERESA MAGNICCARI
Senior Court Reporters

Jury Trial - Preliminaries/Sandoval Ruling

Page 818

1 THE COURT: Good morning.

2 THE CLERK: The People of the State of New York,
3 indictment 71543 of 2023.

4 Appearances, please, starting with the People.

5 MR. STEINGLASS: For the People, ADA Joshua
6 Steinglass, Matthew Colangelo, Susan Hoffinger, Christopher
7 Conroy, Becky Mangold and Katherine Ellis.

8 Good morning everyone.

9 THE COURT: Good morning.

10 MR. BLANCHE: Good morning, your Honor. Todd
11 Blanche. I am joined this morning by President Trump and
12 the rest of the team, Emil Bove, Susan Necheles and Gedalia
13 Stern.

14 Good morning.

15 THE COURT: Good morning. Good morning,
16 Mr. Trump.

17 So we have a couple of housekeeping matters to
18 take care of before we get started.

19 People, how long do you expect your opening
20 statement to be?

21 MR. COLANGELO: Your Honor, about 40 minutes.

22 THE COURT: Okay. Mr. Blanche?

23 MR. BLANCHE: About 25.

24 THE COURT: Okay. That's fair.

25 Because, unfortunately, we are going to have to

Jury Trial - Preliminaries/Sandoval Ruling

Page 819

1 break a little bit earlier or a lot earlier than I
2 anticipated.

3 We were informed this morning by juror number
4 620, who is alternate number six, you may recall that she
5 had a toothache last week. She was able to make an
6 emergency appointment today at three o'clock. Perhaps
7 because of the holiday, I don't know why, that appointment
8 was moved up to 1:20.

9 So, I told her that we can break at 12:30 and I
10 think that's just something we have to do to make sure we
11 don't lose an alternate.

12 MR. STEINGLASS: Can I just ask you a quick
13 question, Judge?

14 Would it be okay, for logistical and bathroom
15 purposes, if after the opening we take a short break to get
16 our witnesses upstairs and to go the bathroom?

17 THE COURT: Sure, of course.

18 The other issue is, we received a call on Friday
19 from juror number nine, who was juror number 423, and I did
20 not speak with the juror, but my understanding is that the
21 juror was concerned about the media attention and wasn't a
22 hundred percent sure that she wanted to be here.

23 The juror is here today. I think that we should
24 speak with the juror. I see we have a courtroom full of
25 people.

Jury Trial - Preliminaries/Sandoval Ruling

Page 820

1 We can either -- we can do it in my chambers. I
2 am sorry, in my robing room and I will ask the court
3 reporter to come in.

4 Your client has waived Antommarchi, right?

5 MR. BLANCHE: Yes.

6 THE COURT: If possible, I would ask that not
7 every single one of your colleagues come in with us, just
8 one or two, find out what the issue is and see if this
9 juror can continue to serve.

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN JUDGE
11 MERCHAN'S ROBING ROOM.)

12 THE COURT: Let the record reflect, we are in the
13 robing room. Mr. Bove, Ms. Necheles, Ms. Hoffinger, Mr.
14 Steinglass and Mr. Blanche are present.

15 I would ask those of you who can sit, please sit,
16 so it's less intimidating for the juror and there is
17 another chair here, maybe Mr. Bove can sit in that chair
18 there and then we can bring the juror in and she can stand.

19 SERGEANT: Would like me to shut the door?

20 THE COURT: When she comes in, yes.

21 SERGEANT: Juror entering.

22 (Whereupon, juror number nine entered the
23 robing room.)

24 THE COURT: Good morning.

25 I apologize for all of this. We need to do

Jury Trial - Preliminaries/Sandoval Ruling

Page 821

1 everything on the record.

2 I understand that you called on Friday to express
3 some concerns.

4 Do you want to talk about this?

5 SWORN JUROR: Yeah, I calmed down now. It was as
6 soon as I left on Thursday people were figuring out it was
7 me based on what was released.

8 I was a little concerned that it was posted that
9 I live by myself. I am a girl that lives by myself. So I
10 feel, I just, I started thinking further into the trial. I
11 started getting nervous that as if -- what if more
12 information comes out?

13 Would I need to be worried for my safety?

14 I was a little uneasy once there were things
15 being posted about me that I didn't necessarily anticipate
16 was going to happen.

17 THE COURT: How do you feel today?

18 SWORN JUROR: I feel better today. I feel
19 grounded. I, obviously, the gravity kind of set in and I
20 just hope that I can continue to stay as anonymous as
21 possible.

22 I live by myself. It was posted that I live by
23 myself. I had concerns if my name were ever to get out
24 there, obviously, that poses a safety risk to me and that
25 was really my biggest concern, if anyone ever figured out

Jury Trial - Preliminaries/Sandoval Ruling

Page 822

1 who I was, where I lived, and that I lived by myself that I
2 wouldn't be safe. That was really my only concern.

3 THE COURT: I can appreciate that.

4 Just a couple of things that, hopefully, will
5 reassure you.

6 First, the jury was the story last week.
7 Hopefully, I expect that the jury will no longer be the
8 story.

9 SWORN JUROR: Yes, yes.

10 THE COURT: Second, it's not entirely possible to
11 read the description and know who would know that it was
12 you, not surprising, so that works out.

13 You know, if anything were to change, if there
14 ever comes a time when you feel like you can't do this,
15 just bring it to my attention. You should know that after
16 the first day, I did speak to the press from the bench.

17 I expressed my disappointment with how much
18 information got out and since that time it's really been
19 very different.

20 Alright?

21 SWORN JUROR: Yes.

22 THE COURT: Anything else you want to tell us?

23 SWORN JUROR: No, it was just safety concerns.

24 Thank you.

25 THE COURT: Thank you. You can go back to the

Jury Trial - Preliminaries/Sandoval Ruling

Page 823

1 jury room.

2 (Juror exits the robing room.)

3 THE COURT: Anything anybody wants to put on the
4 record about that?

5 MR. STEINGLASS: No.

6 MR. BLANCHE: No.

7 THE COURT: Are you comfortable with her staying
8 on the jury?

9 MR. STEINGLASS: Yes.

10 MS. HOFFINGER: Yes.

11 (END OF INQUIRY.)

12 (In open court.)

13 THE COURT: We are back on the record.

14 Juror number nine is going to remain with us. So
15 that's not going to be an issue.

16 Again, just a couple of housekeeping matters.

17 One of the issues that were raised at the end of
18 last week had to do with the limiting instruction regarding
19 Michael Cohen's guilty plea to FICA violations.

20 The People submitted a version. The defense
21 submitted a version. I reviewed them both and, ultimately,
22 I drafted my own, which is really, it's consistent with
23 what I would normally do.

24 So let me hand it down. You can take a look at
25 it, let me know if you have an objection to it. There is

Jury Trial - Preliminaries/Sandoval Ruling

Page 824

1 still plenty of time to correct anything that's a problem.

2 MR. STEINGLASS: Thank you.

3 THE COURT: You are welcome.

4 (Document is handed to the attorneys.)

5 MR. STEINGLASS: That's fine.

6 THE COURT: Anybody wish to be heard on that?

7 MR. STEINGLASS: We have no objection.

8 THE COURT: Counsel?

9 MR. BLANCHE: Nothing new, your Honor.

10 THE COURT: Thank you.

11 There was also an issue regarding at Access
12 Hollywood tape last week and to what extent the People
13 would be permitted to elicit information about it.

14 I promised I would go back and review the
15 transcript. I did. I don't really see the confusion.

16 The issue of the People introducing a transcript
17 was never raised or not raised or what was raised was that
18 the People would be permitted to go into what was discussed
19 in the Access Hollywood tape and that the tape would not be
20 played.

21 If the People were to request and seek to
22 introduce a transcript, I would hear argument of both sides
23 as a matter of evidence, not as a matter of this is the
24 Access Hollywood tape and, therefore, some special rule
25 applies.

Jury Trial - Preliminaries/Sandoval Ruling

Page 825

1 At this point, I don't see any reason why a
2 transcript which accurately summarizes what was said in the
3 tape should not be admitted into evidence.

4 MR. STEINGLASS: Thank you.

5 THE COURT: I will hear you on that.

6 MR. BLANCHE: Your Honor, we, obviously, objected
7 for the reasons we put in our letter and the reason we
8 talked about last week and continue to object, but your
9 Honor has ruled.

10 THE COURT: Thank you.

11 Finally, we did have the Sandoval Hearing last
12 week on Friday and I will read my ruling from the bench.

13 This Court conducted a Sandoval Hearing on
14 Friday, April 19, 2024.

15 At that time, the People disclosed the list of
16 all misconduct and criminal acts of the defendant not
17 charged in the indictment, which the People intend to use
18 at trial to impeach the credibility of the defendant
19 pursuant to CPL Section 245.20, subdivision (3 (a)).

20 The People referred to six different proceedings
21 involving a total of thirteen determinations.

22 The defendant contends, among other things, that
23 prior conduct is too similar to the crimes to which he is
24 being charged and will permit the jury to infer guilt from
25 propensity based on the priors.

Jury Trial - Preliminaries/Sandoval Ruling

Page 826

1 The Court has considered many relevant factors
2 and balanced the prejudice to the defendant against his
3 willingness to advance his own self interest in reaching
4 the Sandoval compromise.

5 The operative standard is familiar and,
6 therefore, briefly repeated. It is well settled that the
7 scope and content of cross-examination rests within the
8 sound discretion of the trial judge. That's *People v.*
9 *Sandoval*, 34 New York 2d 371, 1974.

10 The Court in exercising its discretion prior to
11 trial may limit the People's use of the defendant's history
12 of criminal, vicious and immoral acts to impeach the
13 defendant with cross-examination. *Sandoval* at 373.

14 The Judge balances the act's probative value on
15 questioning the defendant's credibility against the risk of
16 unfair prejudice resulting from their admission. *Sandoval*
17 at 375.

18 There is no precise formula in determining which
19 prior acts are appropriate impeachment material. *People v*
20 *Walker*, 83 New York 2d 455, 1994.

21 The trial court's analysis is not bound by the
22 age, nature or number of defendant's prior crimes. *People*
23 *v. Gray*, 84 New York 2d 713.

24 A defendant can even be impeached with prior acts
25 or prior bad acts that did not result in a criminal charge

Jury Trial - Preliminaries/Sandoval Ruling

Page 827

1 and that's Gray citing Sandoval.

2 Indeed, a trial court may exclude such evidence
3 entirely, may alternatively limit inquiry to the mere fact
4 that there has been a prior conviction. It may limit the
5 inquiry to the existence and nature of the prior conviction
6 or it may permit examination to the facts and circumstances
7 underlying the prior conviction. *People v. Hayes*, 97 New
8 York 2d 203.

9 Thus, even a ruling that permits
10 cross-examination regarding a defendant's entire criminal
11 record does not without more indicate an abuse of
12 discretion. *People v. Walker*, 83 New York 2d at 458.

13 In short, the ultimate question as to whether to
14 permit such impeachment is a matter that rests with the
15 trial judge who exercises a wide range of discretion in
16 ruling on a Sandoval application. That's *People v.*
17 *Contreras* 108 AD 2d 627.

18 Moreover, as far as probative crimes --
19 withdrawn.

20 Moreover, as far as probative crimes go, the mere
21 similarity of a defendant's prior conviction or prior
22 conduct to one of the crimes charged, does not
23 automatically preclude cross-examination. That's *People v.*
24 *Pavao*, P-A-V-A-O, New York 2d 282.

25 That case dealt with violence. The principal was

Jury Trial - Preliminaries/Sandoval Ruling

Page 828

1 the same. The mere fact that the conduct was similar does
2 not in and of itself preclude going into it.

3 It has long been recognized that a defendant
4 cannot shield himself from impeachment on the basis of
5 frequency of his offense or his tendency to specialize in a
6 particular type of crime. *People v. Rahman, R-A-H-M-A-N,*
7 62 AD 2d 968.

8 It is settled law that a criminal defendant who
9 chooses to testify on his own behalf may be cross-examined
10 about any prior criminal, vicious or immoral acts that bear
11 logically on his credibility, including those acts by
12 defendant that did not result, again, in a criminal
13 conviction.

14 This Court is not required to preclude the People
15 from asking about the incidents because they might keep the
16 defendant off the stand. *People v. Hayes.*

17 The Court of Appeals has stated that the alleged
18 singularity of the defendant's testimony does not require
19 the Court to limit otherwise appropriate impeachment
20 material.

21 In fact, Court's have recognized that if the
22 defendant is the only witness, it may be that much more
23 important that the jury be able to access his credibility
24 accurately.

25 Thus, the possible unavailability of other

Jury Trial - Preliminaries/Sandoval Ruling

Page 829

1 witnesses may cause the trial court to conclude this factor
2 increases the importance of defendant's credibility.

3 Of course, fairness dictates that the Court must
4 be mindful of the potential prejudice to the prosecution in
5 the fact-finding process denying the jury access to
6 probative evidence of the defendant's credibility. *People*
7 *v. Bennette, B-E-N-N-E-T-T-E*, 55 New York 2d at 147.

8 Finally, any perceived unfair prejudice by a
9 permitted inquiry may be alleviated by the Court's careful
10 and specific limiting instructions at the time of
11 cross-examination and, again, during final charge.

12 In fact, the Court in clear and forceful language
13 should instruct the jury that they are to consider the
14 defendant's previous conduct only in assessing his
15 credibility and under no such circumstances are to use his
16 prior conduct as proof that he committed the instant crime,
17 given those precise instructions, which the jurors are
18 presumed to follow, *People v. Davis* 58 New York 2d 1102,
19 the Court is permitted to reach a Sandoval compromise.

20 Upon applying that law, if defendant takes the
21 stand, the Court will permit the People to inquire into the
22 following six determinations involving four separate
23 proceedings.

24 First, as to the proceeding of *People by James v.*
25 *Trump*, index number, 452564, document number 1688, the

Jury Trial - Preliminaries/Sandoval Ruling

Page 830

1 Court will allow the People to elicit that on February 16,
2 2024, the defendant was found to have violated Executive
3 Law Section 63 (12) by fraudulently misstating the value of
4 his assets for an economic benefit. The Court ordered the
5 defendant to pay penalties and enjoined the defendant from
6 serving as an officer or director of any New York
7 Corporation for a period of three years.

8 Next, document number 1584, the Court will allow
9 the People to elicit that on October 20, 2023, the
10 defendant violated a court order by failing to remove an
11 untrue, disparaging and personally identifying post about
12 the Court's Principal Law Clerk from the website, Donald J.
13 Trump dot com. The Court fined the defendant \$5,000.

14 And the third document from that incident,
15 document number 1598, the Court will allow the People to
16 elicit that on October 25, 2023, the defendant was found to
17 have intentionally violated a court order by making public
18 attacks on the Judge's law clerk, despite two prior court
19 orders not to do so. The Court fined the defendant
20 \$10,000.

21 Moving on to the next proceeding, and that would
22 be Carroll v. Trump, 22, CV, 7311, and that would be ECF
23 number 214. The Court will allow the People to elicit that
24 on September 6, 2023, the defendant was found to have
25 defamed E. Jean Carroll in public statements in 2019 by

Jury Trial - Preliminaries/Sandoval Ruling

Page 831

1 making false statements with actual malice.

2 As to the next proceeding, that would be Carroll
3 v. Trump, 22, CV, 10016, and that would be ECF number 174.

4 The Court will allow the People to elicit that on May 9,
5 2023, the defendant was found to have defamed E. Jean
6 Carroll in public statements made in 2022 on Truth Social
7 by making a false statement with actual malice. A jury
8 awarded the Plaintiff compensatory and punitive damages.

9 And the fourth one would be People by James v.
10 Trump, index 451130 of 2018. The Court will allow the
11 People to elicit that on December 11, 2018, the defendant
12 stipulated to the dissolution of the Donald J. Trump
13 Foundation to resolve claims by the New York Attorney
14 General that he engaged in repeated and willful
15 self-dealing transactions.

16 The Court has struck this compromise in order to
17 permit the defendant to testify in his own behalf if he
18 chooses to.

19 In doing so, the Court has excluded inquiry to
20 some degree into each of the six proceedings, including two
21 proceedings that the Court will not permit any inquiry at
22 all.

23 Further, the Court has greatly curtailed the
24 extent to which the prosecution may inquire into the
25 underlying facts, the specific claims or charges and the

Court's Opening

Page 832

1 amounts of the significant penalties.

2 The Court cautions defendant that this Sandoval
3 Ruling is a shield and not a sword.

4 After a trial court has made a Sandoval Ruling, a
5 defendant who offers misleading testimony about his
6 background and prior conduct opens the door to questioning
7 that otherwise has been excluded. People v. Fardan,
8 F-A-R-D-A-N, 82 New York 2d 638, at 645 to 647.

9 Would you like to be heard on that?

10 MR. BLANCHE: No.

11 THE COURT: I believe that takes care of all of
12 the preliminary matters.

13 Can we bring the jurors out?

14 MR. STEINGLASS: Judge, I wanted to clarify the
15 record on one point. The Sandoval materials, including the
16 chart, was provided to defense counsel pursuant to your
17 ruling back on March 10th of 2024.

18 Other than that, there is no reason we can't
19 bring in the jury.

20 THE COURT: Okay, let's get the jury, please.

21 SERGEANT: Jurors entering.

22 THE COURT: All rise.

23 (Whereupon, the sworn jury entered the
24 courtroom and were properly seated.)

25 THE COURT: Please be seated.

Court's Opening

Page 833

1 Good morning jurors. Welcome back.

2 Members of the Jury, we are about to proceed with
3 the trial of the People of the State of New York versus
4 Donald J. Trump.

5 At the outset, I am going to explain the various
6 stages of a trial and what you may expect to see and hear
7 during the trial so that you may better understand what is
8 taking place. I will also remind you of some basic
9 principles of law which apply to this and all criminal
10 trials.

11 At the conclusion of the case, I will again
12 remind you of those principles. I will define the crimes
13 charged, explain the law that applies to those charged
14 crimes and list for you the elements that the People must
15 prove beyond a reasonable doubt.

16 These introductory instructions will take about
17 30 minutes and may sound similar to what you heard last
18 week.

19 As you can see, a court reporter is taking down
20 everything that is being said. What the reporter takes
21 down is called the record of the trial. Sometimes you will
22 see a witness use his or her hands to illustrate something.

23 For example, a witness may say that an object was
24 this far away, indicating with their hands.

25 Normally, we will then hear the lawyers, or the

Court's Opening

Page 834

1 Court, say something to the effect of, let the record
2 reflect that the witness is indicating about a foot.

3 We do that because sometimes it becomes necessary
4 to have the court reporter read back what a witness has
5 said or what a witness is indicating. If somebody does not
6 say orally for the record that the witness is indicating
7 with his or her hands, when that portion of the record is
8 read back we may not remember what the witnesses indicated.

9 You, of course, will be able to see with your own
10 eyes and you can make your own judgment.

11 The trial formally begins with what the law calls
12 an opening statement by the prosecutor. The law requires
13 the prosecutor to make an opening statement.

14 The law, however, does not require the defendant
15 to make an opening statement.

16 If the defendant does not make an opening
17 statement, that is not a factor from which you may draw any
18 inference unfavorable to him. Remember, what the lawyers
19 say in an opening statement, or at any time thereafter, is
20 not evidence. The lawyers are not witnesses. What I say
21 is not evidence. I am not a witness.

22 You must decide this case on the evidence and
23 remember at all times that what the lawyers say at any time
24 is not evidence.

25 After the completion of the opening statements,

Court's Opening

1 the prosecutor will proceed with the presentation of
2 evidence.

3 I remind you that the indictment is not evidence.
4 It is simply a document that contains an accusation. The
5 defendant has pled not guilty to those accusations and a
6 trial is for you to hear the evidence and decide whether
7 the defendant is guilty, or not guilty.

8 I remind you also that evidence is the testimony
9 of witnesses, the stipulations, if any, that are agreed to
10 by the parties and documents or other physical objects
11 which are received in evidence. Testimony is, of course,
12 the most common form of evidence and comes from the
13 questioning of the witnesses by the lawyers, and perhaps by
14 the Court.

15 A question by itself is not evidence. It is the
16 question with the answer that is evidence.

17 Sometimes a question will assume, for example,
18 sometimes a question will assume something to be true.

19 You are not, however, to conclude that an
20 assumption in a question is true unless the answer in your
21 judgment confirms it to be true. So you must consider the
22 question and the witness' answer and decide whether you
23 find the answer believable and accurate. Because, again,
24 it is the question with the answer that is the evidence.

25 Next, evidence may come in the form of a

Court's Opening

1 stipulation. A stipulation is information which both
2 parties agree to present to the jury as evidence without
3 calling a witness to testify to that information.

4 Thus, evidence may come in the form of physical
5 items such as documents, photographs, clothing or charts.

6 When a lawyer is questioning a witness and in the
7 question refers to a physical object for the first time,
8 the object is normally marked with a number or a letter of
9 the alphabet so that we can more easily identify the object
10 and refer to it. That procedure is very helpful in keeping
11 track of physical objects.

12 Sometimes, depending on the type of physical
13 object, it may be too difficult or inconvenient to mark the
14 object and the object is deemed marked rather than actually
15 marked.

16 Normally, when the object is first referred to a
17 lawyer will ask the Court to have the object marked for
18 identification.

19 If the People make the request and the Court
20 grants the request, the object is indeed marked with a
21 number. If the defendant makes a request and the Court
22 grants the request, the object is deemed or marked with a
23 letter of the alphabet. That just helps us to remember who
24 introduced the Exhibit.

25 Sometimes to save time during the trial we will

Court's Opening

Page 837

1 have certain physical objects deemed or marked for
2 identification before the trial begins and you will then
3 hear the lawyer refer to the object by its number or
4 letter.

5 An item deemed or marked for identification, is
6 not evidence and is, therefore, not available for your
7 inspection and consideration. It's only the objects that
8 are actually received into evidence that are evidence.

9 Sometimes a lawyer will ask the Court to receive
10 an object in evidence and when a lawyer does that the other
11 lawyer is permitted to ask the witness questions designed
12 to determine whether the object can, under the law, be
13 admitted into evidence.

14 Again, if I grant the request to admit the object
15 in evidence, the object becomes evidence and is available
16 for your inspection and consideration.

17 I advise you that it is common and permissible
18 for a lawyer or an investigator for a lawyer to speak to a
19 witness about his or her testimony before calling him or
20 her to the stand.

21 Also, a witness may review documents and other
22 material pertaining to the case before he or she testifies
23 at the trial.

24 Generally, a witness scheduled to testify at
25 trial may not be present in the courtroom during the

Court's Opening

1 testimony of other witnesses, but there are exceptions.

2 After the People have completed the presentation
3 of their evidence, the defendant may, but is not required,
4 to present evidence.

5 I remind you that throughout these proceedings
6 the defendant is presumed to be innocent. As a result, you
7 must find the defendant not guilty unless on the evidence
8 presented at this trial you conclude that the People have
9 proven the defendant guilty beyond a reasonable doubt.

10 That a defendant does not testify as a witness is
11 not a fact from which any inference unfavorable to the
12 defendant may be drawn. The defendant is not required to
13 prove that he is not guilty. In fact, the defendant is not
14 required to prove or disprove anything.

15 To the contrary, the People have the burden of
16 proving the defendant guilty beyond a reasonable doubt.
17 That means before you can find the defendant guilty of a
18 crime, the People must prove beyond a reasonable doubt
19 every element of the crime, including that the defendant is
20 the person who committed that crime.

21 The burden of proof never shifts from the People
22 to the defendant.

23 If the People fail to satisfy their burden of
24 proof, you must find the defendant not guilty, and if the
25 People satisfy their burden of proof, you must find the

Court's Opening

1 defendant guilty.

2 The law uses the terms, proof beyond a reasonable
3 doubt to tell you how convincing the defendant's guilt must
4 be to permit a verdict of guilty. The law recognizes that
5 in dealing with human affairs there are very few things in
6 this world that we know with absolute certainty.

7 Therefore, the law does not require the People to
8 prove a defendant guilty beyond all possible doubt.

9 On the other hand, it is not sufficient to prove
10 that the defendant is probably guilty.

11 In a criminal case the proof of guilt must be
12 stronger than that. It must be beyond a reasonable doubt.

13 A reasonable doubt is an honest doubt of the
14 defendant's guilt for which a reason exists based upon the
15 nature and the quality of the evidence.

16 It is an actual doubt, not an imaginary doubt.

17 It is a doubt that a reasonable person acting in
18 a matter of this importance would be likely to entertain
19 because of the evidence that was presented or because of
20 the lack of convincing evidence.

21 The proof of guilt beyond a reasonable doubt is
22 proof that leaves you so firmly convinced of a defendant's
23 guilt that you have no reasonable doubt of the existence of
24 any element of the crime or of the defendant's identity as
25 the person who committed that crime.

Court's Opening

1 In determining whether the People have proven the
2 defendant's guilt beyond a reasonable doubt, you should be
3 guided solely by a full and fair evaluation of the
4 evidence.

5 After carefully evaluating the evidence, each of
6 you must decide whether that evidence convinces you beyond
7 a reasonable doubt of the defendant's guilt.

8 Whatever your verdict may be, it must not rest on
9 baseless speculation nor may it be influenced in any way by
10 bias, prejudice, sympathy or by a desire to bring an end to
11 your deliberations or to avoid an unpleasant duty.

12 Again, if you are not convinced beyond a
13 reasonable doubt that the defendant is guilty of the
14 charged crime, you must find the defendant not guilty of
15 the crime. And if you are convinced beyond a reasonable
16 doubt that the defendant is guilty of a charged crime, you
17 must find the defendant guilty of that crime.

18 Now, when each witness, by whomever called, is
19 first examined, that is they are asked questions by the
20 lawyer who calls the witness to testify, that is called
21 direct examination.

22 When the direct examination is completed, the
23 other lawyer is permitted to ask questions of the witness
24 and that is called cross-examination.

25 The lawyers are responsible for questioning the

Court's Opening

1 witnesses. The Court may at times ask a witness a
2 question. The jurors may not ask questions of the
3 witnesses.

4 You may, but are not required, to take notes. If
5 you wish to take notes we will provide materials to you for
6 that purpose. If you decide to take notes, you must follow
7 these rules.

8 Remember, every word of each witness is recorded
9 by the court reporter and during deliberations upon your
10 request the testimony will be read back to you in whole or
11 in part. So there is no need to take verbatim notes of a
12 witness' testimony.

13 Notes by definition are a brief written record of
14 something to assist your memory. A note should not take
15 precedence over your own independent recollection.

16 Remember, also, you are the finders of fact who
17 are responsible to evaluate the believability and accuracy
18 of a witness' testimony.

19 It is, thus, important that you be able to both
20 fully comprehend what a witness is saying and how a witness
21 is saying it.

22 Accordingly, you must not permit note taking to
23 distract you from the proceedings. If you make a note, it
24 should be brief and not distract you from what the next
25 question and answer are.

Court's Opening

1 Any notes a juror takes are only for that juror's
2 own personal use in refreshing his or her recollection.

3 Thus, jurors who chose not to take notes must
4 rely on their own independent recollection and must not be
5 influenced by any notes another juror may have taken.

6 Also, a juror's notes are not a substitute for
7 the recorded transcript of the testimony or for any exhibit
8 received into evidence.

9 If during your deliberations there is a
10 discrepancy between a juror's recollection and his or her
11 notes regarding the evidence, you should ask to have the
12 relevant testimony read back or the exhibit produced for
13 your inspection.

14 At the end of each day, you will leave your notes
15 on your chair. They will be collected and safeguarded here
16 and at the end of trial they will be destroyed.

17 As judge's of the fact, you alone determine the
18 truthfulness and accuracy of each witness. You must decide
19 whether a witness tells the truth and was accurate or
20 instead testified falsely or was mistaken.

21 You must also decide what importance to give to
22 the testimony you accept as truthful and accurate. It is
23 the quality of the testimony that is controlling, not the
24 number of witnesses who testified.

25 There is no particular formula for evaluating the

Court's Opening

1 truthfulness and accuracy of another person's testimony or
2 statements. You bring to this process all of your varied
3 life experiences. In life you frequently decide the
4 truthfulness and accuracy of statements made to you by
5 other people. The same factors used to make those
6 decisions should be used in this case when evaluating the
7 testimony.

8 At the end of the trial I will give you some
9 examples of those factors.

10 There are rules for all stages of a trial,
11 including rules that govern whether certain evidence may be
12 introduced and, if so, how and when.

13 Part of my job is to enforce those rules. Some
14 of these rules you may understand the nature of the rule
15 but some of them you may not understand unless you studied
16 the law. The rules have been carefully developed over
17 hundreds of years for the sole purpose of guaranteeing a
18 fair and orderly trial.

19 In other words, the rules are not designed to
20 determine whether the evidence you hear and see is true or
21 false, accurate or inaccurate. It is for you, not for me,
22 to evaluate the evidence and make those decisions.

23 The rules are designed to ensure that the
24 evidence you hear and see is relevant and in a form that
25 permits you to evaluate it fairly.

Court's Opening

1 A witness usually can testify only about matters
2 the witness has personal knowledge of, that is, something
3 the witness has personally seen, heard, felt, touched or
4 tasted.

5 Thus, a witness is not permitted to guess or
6 speculate or say what he or she thinks another person saw,
7 heard, felt, touched or tasted.

8 Also, a witness is not permitted to give an
9 opinion about matters for which a special expertise is
10 necessary unless, of course, the witness purports to be an
11 expert on the matter he or she is being questioned about.

12 (Whereupon, Principal Court Reporter, Susan
13 Pearce-Bates, was relieved by Senior Court Reporter, Lisa
14 Kramsky.)

15
16
17
18
19
20
21
22
23
24
25

Jury Instructions - the Court

1 (Continued from previous page.)

2 THE COURT: With some exceptions, what a witness
3 may have been thinking when something has taken place is not
4 relevant evidence.

5 Finally, a witness is often not permitted to
6 testify to hearsay, meaning generally that a witness cannot
7 testify to what the witness may have said before the trial,
8 or what another person may have said to that witness before
9 the trial.

10 But there are many exceptions to the hearsay rule
11 for a variety of sound reasons, too numerous to go into at
12 this time.

13 I will, however, explain a couple of exceptions
14 that frequently arise during a trial.

15 Sometimes, a witness will be permitted to testify
16 that the witness did something because of what someone said
17 in that circumstance.

18 It does not matter who uttered the statement or how
19 the speaker gathered the information for the statement, or
20 even whether the statement is truthful and accurate.

21 It matters only that someone uttered the words and
22 the witness did something upon hearing those words.

23 So in that instance you may not consider what the
24 witness was told for the truth of the words said to the
25 witness. You may consider the words only for the reason

Jury Instructions - the Court

Page 846

1 they are offered, that is, to explain what the witness did
2 after hearing the statement.

3 During the presentation of evidence, the lawyers
4 for the parties will in turn ask questions of the witnesses,
5 and during that questioning a lawyer is not permitted to
6 make comments on the witness's answers or on the case.

7 That is not allowed. That happens on TV and in the
8 movies, but it doesn't happen in real trials.

9 In a real trial, it is at the end of the case that
10 the lawyers are permitted to address the jurors in what are
11 called a summation.

12 And it is then that the lawyers may comment on the
13 witnesses, the testimony, and any other evidence.

14 During the questioning of a witness, the lawyer may
15 use a question or some other presentation of evidence.

16 If not in accord with a rule of law, that lawyer
17 will object.

18 When an objection is made, I will decide whether
19 the rules permit the question to be asked or the evidence to
20 be introduced.

21 The objection will be one word: Objection.
22 Anything more than that, then a party might gain an unfair
23 edge.

24 Making objections is part of the lawyer's job. You
25 are not to draw any unfavorable inference because objections

Jury Instructions - the Court

Page 847

1 are made; they take place at every trial.

2 A lawyer may object before a witness answers a
3 question or after a witness answers a question.

4 When an objection is made to a question before the
5 witness answers, if I overrule the objection, the witness
6 will be permitted to answer.

7 If I sustain the objection, there is no answer and,
8 therefore, no evidence.

9 Remember, a question alone is not evidence.

10 If a lawyer objects after the witness has answered
11 the question and I overrule the objection, the answer stands
12 as evidence.

13 If I explain the objection, the answer is not
14 evidence.

15 The question and answer is stricken from the
16 record, and you are to completely disregard that answer as
17 though it were never said.

18 Also, the Court has an obligation under the laws
19 of New York to make sure that fundamental rules are
20 followed, even if one of the lawyers does not actually voice
21 an objection.

22 So, on occasion, you may hear me say sustained or
23 words to that effect, even though no one has actually
24 objected.

25 Any ruling by the Court on an objection of counsel

Jury Instructions - the Court

Page 848

1 or otherwise is based on our law and expresses no opinion
2 about the facts of the case or whether the defendant is
3 guilty or not guilty.

4 Remember, you are responsible for making that
5 decision.

6 Now, from time to time during the course of the
7 trial, there will be conferences at the bench with counsel
8 and if they become prolonged it may be necessary for the
9 Court to ask the jury to return to the jury room.

10 These conferences that deal with questions and
11 matters of law and scheduling of the trial are my
12 responsibility, so when the occasion arises when there are
13 conferences at the bench or outside of your presence, I ask
14 for your understanding.

15 Upon completion of the presentation of evidence,
16 the lawyers will address you in a closing statement, or what
17 the law calls a summation.

18 What a lawyer says in a summation is not evidence.
19 The summations, however, provide each lawyer an opportunity
20 to review the evidence presented and submit for your
21 consideration the facts, inferences and conclusions which
22 they contend may be properly drawn from the evidence.

23 After summations are concluded, I will instruct you
24 on the rules of law applicable to the case.

25 You must accept and follow those rules.

Jury Instructions - the Court

1 You will then begin your deliberations.

2 During your deliberations, your function as jurors
3 will be to decide what the facts are and to apply the rules
4 of law that I set out.

5 You will determine what the facts are from all of
6 the testimony that you hear, the exhibits that are submitted
7 and any stipulations the parties have agreed to.

8 In other words, you will decide the case on the
9 evidence.

10 The conclusion you reach from determining the facts
11 and applying the law will be your verdict, guilty or not
12 guilty.

13 Remember, you have promised to be a fair juror.

14 A fair juror is a person who will keep their
15 promise to be fair and impartial and who will not permit the
16 verdict to be influenced by bias or prejudice in favor of or
17 against the person who appeared in this trial on account of
18 that person's race, color, national origin, ancestry,
19 gender, gender identity or expression, religion, religious
20 practice, age, disability, or sexual orientation.

21 And, further, a fair juror must be mindful of any
22 stereotypes or attitudes about people or about groups of
23 people that the juror may have, and must not allow those
24 stereotypes or attitudes to affect their decision.

25 As I explained during jury selection, we all

Jury Instructions - the Court

Page 850

1 develop and hold unconscious views on many subjects.

2 Some of those unconscious views may come from
3 stereotypes and attitudes about people or about groups of
4 people that may impact on a person's thinking and
5 decision-making without that person even knowing it.

6 As a juror, you are asked to make a very important
7 decision about another member of the community.

8 I know you would not want to make that decision
9 based on such stereotypes or attitudes, that is, on implicit
10 biases.

11 And it would be wrong for you to do so.

12 A fair juror must guard against the impact of such
13 stereotypes or attitudes.

14 You can do this by asking yourself during your
15 deliberations whether your views and conclusions would be
16 different if the defendant, witnesses or others that you
17 have heard about or seen in court were of a different race,
18 color, national origin, ancestry, gender, gender identity
19 or expression, religious practice, age, political
20 affiliation or sexual orientation or if they did not have a
21 disability.

22 If the answer is yes, then in keeping with your
23 promise to be fair, reconsider your views and conclusions
24 along with the other jurors, and make sure your decision is
25 based on the evidence and not on stereotypes or attitudes.

Jury Instructions - the Court

Page 851

1 Justice requires no less.

2 Under our law, Juror Number 1 will serve as the
3 jury's foreperson.

4 During the trial, the foreperson has the same
5 responsibilities as any other juror.

6 During deliberations, the foreperson will sign any
7 note that the jury sends to me, including that the jury has
8 reached a verdict. The foreperson will announce the jury's
9 verdict.

10 Thus, in sum, the stages of the criminal trial are
11 the opening statements, the presentation of evidence,
12 summations, the final instructions of the Court to the jury
13 on the law, and the deliberation of the jury and the
14 verdict.

15 During the trial, if you need to speak with me
16 about something relating to your jury service or the trial,
17 please tell a court officer that you need to speak to me.

18 I will then arrange a meeting with the parties, in
19 the courtroom or in my robing room.

20 Do not discuss with your fellow jurors whatever you
21 feel necessary to bring to my attention.

22 And after we have had our conversation, do not
23 discuss with your fellow jurors whatever it is that we
24 discussed.

25 During the trial we do our best to avoid delay, but

Jury Instructions - the Court

Page 852

1 from experience I know delays are inevitable for a multitude
2 of reasons, through no one's deliberate fault.

3 When those delays occur, I ask for your
4 understanding and your patience.

5 I assure you your time is important to me. I never
6 take it for granted, and I never want to waste it.

7 I request that you please be here at the times I
8 set so that the absence or lateness of a juror is not the
9 occasion for delay.

10 If an emergency arises that may make you late or
11 prevent you from attending, please call the Court, leave a
12 number where you can be reached and explain the problem so
13 we can minimize everyone's inconvenience.

14 In this case, we have six alternate jurors.

15 An alternate juror is expected to pay the same
16 close attention to the case as any one of the first 12
17 jurors.

18 The only difference between an alternate juror and
19 one of the first 12 jurors is that the alternate juror does
20 not know whether that juror will be called upon at some
21 point during the trial to substitute for one of the 12
22 jurors.

23 That substitution could take place only if some
24 presently unforeseen extraordinary emergency arises that
25 makes it totally impossible for one of the first 12 jurors

Jury Instructions - the Court

1 to complete the trial.

2 Our law expects that the first 12 jurors who
3 begin the trial will be the same 12 jurors who complete the
4 trial.

5 So it takes an extraordinary emergency before there
6 may be a substitution of an alternate.

7 Finally, our law requires jurors to follow certain
8 instructions in order to help assure a just and fair trial.
9 And I am required by law to read these admonitions to you
10 whenever we separate.

11 You will hear them countless times during the
12 course of the trial.

13 I will now give you those instructions:

14 Do not speak either among yourselves or with anyone
15 else about anything related to the case.

16 You may tell the people with whom you live or your
17 employer that you are a juror, and give them information
18 about when you will be required to be in court, but you may
19 not talk with them or anyone else about anything related to
20 the case.

21 Do not at any time during the trial request,
22 accept, agree to accept or discuss with any person the
23 receipt or acceptance of any payment or benefit in return
24 for supplying any information concerning the trial.

25 You must promptly report directly to me any

Jury Instructions - the Court

Page 854

1 incident within your knowledge involving any attempt by any
2 person to improperly influence you or any members of the
3 jury.

4 Do not visit or view the locations or places that a
5 charged crime was allegedly committed or any other premises
6 or place involved in the case.

7 And you must not use internet Maps, Google Earth or
8 any other program or device to search for and view any
9 location discussed in the testimony.

10 Do not read, view or listen to any accounts or
11 discussions of the case reported by newspapers, television,
12 radio, the internet or any other news media.

13 Do not attempt to research any fact, issue or law
14 related to the case, whether by discussion with others, by
15 research in a library or on the internet, or by any other
16 means or source.

17 I want to emphasize that in addition to not
18 speaking face-to-face with anyone about the case, you must
19 not communicate with anyone about the case by any other
20 means, including by telephone, text messages, email, chat
21 rooms, blogs, social websites such as Facebook or X.

22 And you must not provide any information about the
23 case to anyone by any means whatsoever, and that includes
24 the posting of information about the case, or what you were
25 doing on the case, on any device or anything outside the

Jury Instructions - the Court

Page 855

1 case, including chats, blogs, social websites or any other
2 means.

3 You must also not Google or otherwise search for
4 any information about the case or the locations involved in
5 the case or the people involved in the case, including the
6 defendant, the witnesses, the lawyers or myself.

7 Now, jurors, I want you to understand why these
8 rules are so important.

9 Our law does not permit jurors to speak with anyone
10 else about the case or permit anyone to talk to them about
11 the case because only you are authorized to render a
12 verdict.

13 Only you have been found to be fair, and only you
14 have promised to be fair.

15 No one else has been so qualified for this trial.
16 Our law also does not permit jurors to speak among
17 themselves about the case until the Court tells them to
18 begin their deliberations, because premature discussions can
19 lead to a premature final decision.

20 Our law does not permit you to visit a place
21 discussed in the testimony.

22 First, you cannot always be sure that the place is
23 in the same condition as it was on the day in question.

24 Second, even if it were in the same condition, once
25 you go to a place discussed in the testimony to evaluate the

Jury Instructions - the Court

Page 856

1 the evidence, in light of what you see, you become a
2 witness, not a juror.

3 As a witness, you may now have an erroneous view of
4 the scene that may not be subject to the correction by
5 either party. That would not be fair.

6 Finally, our law requires that you not read or
7 listen to any news accounts or posts of the case and that
8 you not attempt to research any fact, issue or law related
9 to the case.

10 Your decision must be based solely on the testimony
11 and other evidence presented in this courtroom.

12 It would not be fair to the parties for you to base
13 your decision on a reporter's view or opinion or upon
14 information that you acquire out of the courtroom.

15 These rules are designed to help guarantee a fair
16 trial, and a violation of any of these rules can jeopardize
17 the integrity of these proceedings.

18 Accordingly, our law sets forth serious
19 consequences if the rules are not followed.

20 I trust you understand and appreciate the
21 importance of following these rules.

22 And in accordance with your ultimate promise, I
23 know you promise to do so.

24 Before we begin with the opening statement, I know
25 we briefly discussed scheduling.

Lisa Kramsky,
Senior Court Reporter

Opening Statement - Mr. Colangelo

Page 857

1 We tried to contact all of you to let you know that
2 we would be working through lunch today and ending at 2:00,
3 so that you wouldn't be surprised when you got here.

4 There is a slight change today, and we are only
5 going to be working until 12:30 only today.

6 Tomorrow we are going to start at 11. Once again,
7 we are going to work through lunch, and we will end the day
8 at 2:00.

9 Wednesday is my calendar day, so we cannot meet on
10 Wednesdays.

11 We will work all day Thursday, Friday.

12 And then Monday and Tuesday next week we will be
13 back to working through lunch until 2:00 because of the
14 holiday.

15 After that, we should settle into a much more
16 normal routine of 9:30 to 4:30.

17 Having concluded my preliminary instructions, I
18 will now ask the People to deliver their opening statement.

19 People.

20 MR. COLANGELO: Good morning, your Honor, counsel,
21 members of the jury.

22 This case is about a criminal conspiracy and a
23 cover-up.

24 The defendant, Donald Trump, orchestrated a
25 criminal scheme to corrupt the 2016 presidential election;

Opening Statement - Mr. Colangelo

Page 858

1 then he covered up that criminal conspiracy by lying in his
2 New York business records over and over and over again.

3 In June of 2015, Donald Trump announced his
4 candidacy for president in the 2016 election; a few months
5 later this conspiracy began.

6 He invited his friend, David Pecker, to a meeting
7 at Trump Tower here in Manhattan.

8 Mr. Pecker was the CEO of a media company that,
9 among other things, owned and published the National
10 Enquirer tabloid.

11 Michael Cohen was also at that meeting. He worked
12 for the defendant as the defendant's special counsel at his
13 company, the Trump Organization.

14 And those three men formed a conspiracy at that
15 meeting to influence the presidential election by concealing
16 negative information about Mr. Trump in order to help him
17 get elected.

18 As one part of that agreement, Michael Cohen paid
19 \$130,000 to an adult film actress named Stormy Daniels just
20 a couple of weeks before the 2016 election to silence her
21 and to make sure the public did not learn of the sexual
22 encounter with the defendant.

23 Cohen made that payment at the defendant's
24 direction, and he did it to influence the presidential
25 election.

Opening Statement - Mr. Colangelo

Page 859

1 After the election, the defendant then reimbursed
2 Cohen for that payment through a series of monthly checks,
3 all of which were processed through the defendant's company,
4 the Trump Organization, and they disguised what the payments
5 were for.

6 The defendant said in his business records that he
7 was paying Cohen for legal services pursuant to a retainer
8 agreement.

9 But, those were lies. There was no retainer
10 agreement.

11 Cohen was not being paid for legal services. The
12 defendant was paying him back for an illegal payment to
13 Stormy Daniels on the eve of the election.

14 The defendant falsified those business records
15 because he wanted to conceal his and others' criminal
16 conduct.

17 In total, the defendant falsified 34 business
18 records to cover up that criminal conspiracy.

19 As a result of his conduct, the defendant was
20 indicted by a Grand Jury in Manhattan on 34 counts of
21 falsifying business records.

22 And the first count of that indictment reads:

23 The Grand Jury of the County of New York, by this
24 indictment, accuses the defendant of the crime of Falsifying
25 Business Records in the First Degree in violation of Penal

Opening Statement - Mr. Colangelo

1 Law Section 175.10, committed as follows:

2 The defendant, in the County of New York and
3 elsewhere, on or about February 14th, 2017, with intent to
4 defraud and intent to commit or conceal another crime and to
5 aid and conceal the commission thereof, made and caused a
6 false entry in the business records of an enterprise, to
7 wit: An invoice from Michael Cohen, dated February 14th,
8 2017, marked as a record of the Donald J. Trump Revocable
9 Trust and kept and maintained by the Trump Organization.

10 Now, the remaining 33 counts in this indictment
11 detail the rest of the false business records charges for
12 each monthly payment.

13 The fraudulent cover-up scheme involved falsifying
14 three different types of business records: An invoice,
15 falsely describing a request for payment for legal services
16 rendered in a given month; a voucher entry in the Trump
17 Organization's general ledger system falsely describing the
18 payment as one for legal services; and payment checks with
19 check stubs that also falsely describe the nature and
20 payments.

21 All in all, the defendant disguised his payments to
22 Michael Cohen through 11 falsified invoices, 12 falsified
23 ledger entries and 11 falsified checks for a total of 34
24 false business records in the books and records of his
25 company, the Trump Organization.

Opening Statement - Mr. Colangelo

Page 861

1 But, as Judge Merchan told you, the indictment is
2 not evidence.

3 So, let's talk about what the evidence will be.

4 It starts with that August 2015 meeting in Trump
5 Tower.

6 The defendant had just announced that he was
7 running for president.

8 And he asked David Pecker to come to Trump Tower to
9 talk.

10 At the time, David Pecker was the chairman and CEO
11 of a major media company called American Media, Incorporated
12 or AMI.

13 AMI owned and published celebrity magazines, health
14 and fitness magazines, and supermarket tabloids like the
15 National Enquirer.

16 As the man in charge of AMI, Pecker had the
17 ultimate say over publication decisions. He had the say
18 over what stories to publish or not publish in any of AMI's
19 magazines or tabloids.

20 And Trump and Pecker were joined at that meeting by
21 Michael Cohen, who, as I mentioned, worked for the defendant
22 at the Trump Organization and served as special counsel to
23 the defendant.

24 Now, Cohen's job, really, was to take care of
25 problems for the defendant.

Opening Statement - Mr. Colangelo

Page 862

1 You will hear evidence at trial that he was even
2 referred to as Trump's "fixer".

3 So, those three men, Donald Trump, David Pecker and
4 Michael Cohen, struck an agreement at that meeting;
5 together, they conspired to influence the 2016 presidential
6 election in three different ways.

7 First, they agreed that Pecker would help the
8 defendant's campaign by acting as eyes and ears for the
9 campaign. Pecker would use AMI's network of sources through
10 all of its magazines and publications to gather information
11 that might be harmful to Trump's candidacy, report that
12 information to Cohen, so Donald Trump would then prevent the
13 information from becoming public.

14 Second, they agreed that AMI would use its tabloids
15 and magazines to publish flattering stories about the
16 defendant.

17 And, third, they agreed that AMI would use those
18 same publications to attack Mr. Trump's political opponents.

19 After the meeting, David Pecker told the National
20 Enquirer's Editor-in-Chief, a man named Dylan Howard, to
21 report directly to Pecker about this Trump Organization
22 conspiracy and he enlisted his help in carrying it out.

23 And, together, those coconspirators then followed
24 through on every aspect of this scheme I just described.

25 So, for example, the National Enquirer ran headline

Opening Statement - Mr. Colangelo

Page 863

1 after headline that extolled the defendant's virtues,
2 headlines that Mr. Pecker specifically directed his
3 publication to make because of the conspiracy he reached at
4 the Trump Organization agreement.

5 Many of those headlines and the stories behind them
6 were even shown to Cohen and the defendant in advance before
7 they were published so the defendant could review them,
8 request changes, accept or reject publication stories, even
9 cover art.

10 The National Enquirer also ran stories attacking
11 Mr. Trump's political opponents.

12 You will see evidence of those stories at trial.
13 They include tabloid headlines and stories attacking one of
14 his political opponents, Dr. Ben Carson, accusing him of
15 medical malpractice.

16 They ran other stories attacking a then-candidate
17 named Senator Ted Cruz, accusing him of sexual infidelity,
18 accusing him of having some family connection to the JFK
19 assassination.

20 The National Enquirer ran these stories as a part
21 of that conspiracy that was launched at the Trump Tower
22 meeting, and they did it to help the defendant's campaign.

23 And after some of these stories came out, the
24 defendant even followed up with his contacts at AMI to thank
25 them for their stories and to praise them for their attacks

Opening Statement - Mr. Colangelo

Page 864

1 in their publications on his political opponens.

2 So, you had three parts of this conspiracy:

3 You had the agreement to run positive coverage; you
4 had the agreement to attack his opponents; and then the core
5 of the conspiracy was David Pecker's agreement to act as
6 eyes and ears for the campaign in an effort to locate
7 damaging information about the defendant and then take steps
8 to try to bury it to help Trump get elected.

9 It was a core part of this conspiracy that the
10 coconspirators then executed through three different
11 transactions over the course of the next year.

12 They used a practice called catch-and-kill.

13 Catch-and-kill is when the tabloid buys up damaging
14 information about someone, demands that the source sign a
15 non-disclosure agreement to prevent them from taking that
16 information or that story anywhere else, and then the
17 tabloid declines to publish the story to prevent it from
18 ever seeing the light of day.

19 So it's a way of buying damaging information not to
20 publish it, but to hide it, make it go away.

21 And in this case, to help the candidate.

22 Now, Trump and Pecker and Cohen carried out three
23 different catch-and-kill deals to help him get elected.

24 First, just a few months after the Trump Tower
25 meeting, David Pecker learned that a former Trump Tower

Opening Statement - Mr. Colangelo

Page 865

1 doorman named Dino Sajudin was trying to sell information
2 about an alleged out-of-wedlock child that Trump had
3 fathered with one of his former housekeepers.

4 So, as they agreed at the Trump Tower meeting,
5 Pecker immediately contacted Cohen with that information.

6 Cohen then told the defendant, Donald Trump, who
7 told Cohen to take care of it.

8 After consulting with Cohen, Pecker directed
9 Howard, his Editor-in-Chief at the National Enquirer, to
10 negotiate an agreement to pay \$30,000 to Sajudin to buy the
11 exclusive rights of that story.

12 And the evidence will show that Pecker was not
13 acting as a publisher; he was acting as a coconspirator.

14 The evidence will show that this was a highly
15 unusual deal. Even for tabloid journalism, it was a lot
16 more money than they would usually pay to a source.

17 They bought Sajudin's story without even fully
18 investigating it.

19 And it was the first time that David Pecker had
20 ever paid anyone for information about Donald Trump.

21 But, Pecker directed that the deal take place
22 because of the agreement he had reached and because he had
23 promised Donald Trump at the Trump Tower meeting in August
24 of 2015 that he would use his media empire to help the
25 defendant's campaign.

Opening Statement - Mr. Colangelo

Page 866

1 And they knew that public disclosure of Sajudin's
2 information would hurt that campaign.

3 Michael Cohen even coordinated with AMI throughout
4 the whole process and insisted that AMI amend the agreement
5 with Mr. Sajudin after it was signed, to add a \$1 million
6 damages penalty fee if Sajudin violated the confidential
7 agreement.

8 So you have the candidate's fixer actively
9 colluding with a catch-and-kill deal with the media
10 enterprise by adding deal terms to lock up the negative
11 information even tighter to keep it from coming out before
12 the election.

13 And when AMI later determined that Mr. Sajudin's
14 allegations weren't even true, Cohen told Pecker not to
15 release Sajudin, not to release him from his NDA until after
16 the presidential election.

17 And because of the agreement they he had reached,
18 Pecker did what Cohen said.

19 Pecker deliberately delayed releasing Sajudin from
20 his non-disclosure agreement with AMI until after the
21 November 2016 election, when it could no longer hurt Trump's
22 candidacy.

23 So that was just the first of the three
24 catch-and-kill deals that I mentioned that came out of the
25 Trump Tower conspiracy.

Opening Statement - Mr. Colangelo

Page 867

1 The second involved a woman named Karen McDougal, a
2 former Playboy playmate.

3 About five months before the presidential election,
4 in June of 2016, Dylan Howard of the National Enquirer heard
5 from one of his frequent sources, a lawyer named Keith
6 Davidson.

7 Davidson was representing Ms. McDougal, and she
8 was shopping around her account of her affair with
9 Mr. Trump.

10 Davidson told Howard that he had, quote, a
11 blockbuster Trump story.

12 Karen McDougal said that she had had a romantic and
13 sexual relationship with the defendant while he was married
14 that lasted nearly a year.

15 So, as David Pecker had tasked him at the Trump
16 Tower meeting, Howard got in touch with Cohen, the Trump
17 Organization right away and told him what he had learned;
18 Cohen then told the defendant; and the evidence will show
19 that the defendant desperately did not want this information
20 about Karen McDougal to become public because he was
21 concerned about its effect on the election.

22 And at David Pecker's direction, Howard flew to
23 California, he met with Karen McDougal and her lawyer, Keith
24 Davidson, in person.

25 Before the meeting, during the meeting, after the

Opening Statement - Mr. Colangelo

Page 868

1 meeting, Howard and Pecker were in frequent and urgent
2 contact with Michael Cohen, who wanted updates on the
3 progress of their discussions.

4 You are going to see the flurry of text messages,
5 the barrage of phone calls around those conversations and
6 around that meeting.

7 And when Howard called Cohen after the meeting with
8 Karen McDougal, Howard said he thought the allegations were
9 true.

10 So, Cohen asked AMI to make arrangements to buy
11 McDougal's information quickly so they could prevent anyone
12 else from publishing it.

13 Trump and Pecker and Cohen, all, they had a series
14 of conversations and discussions about who would put up the
15 money for that payoff deal.

16 Pecker ultimately agreed that he would have AMI
17 make a \$150,000 payment to McDougal in exchange for the
18 limited life rights to the story of her affair.

19 To provide some cover for that payoff, AMI added
20 other terms to the deal.

21 Ms. McDougal would appear on magazine covers; with
22 the help of a ghost writer, they would run lifestyle
23 articles under her name in other AMI magazines.

24 But the real reason Pecker directed AMI to make
25 this payment to McDougal was to make sure she didn't

Opening Statement - Mr. Colangelo

Page 869

1 publicize her accounts of her affair with Trump before the
2 2016 election.

3 David Pecker will also testify that \$150,000 was
4 way more than AMI would ordinarily pay for this type of
5 story.

6 But he discussed it directly with Donald Trump and
7 he discussed it with Michael Cohen, and he agreed to the
8 deal on the understanding that Trump was going to find a way
9 to pay AMI back.

10 You will hear David Pecker testify about his
11 conversations with Donald Trump about the McDougal payoff.

12 And three months before Election Day, AMI and
13 McDougal signed that deal.

14 But as the weeks dragged on and the defendant
15 hadn't yet made good on his agreement to pay AMI back,
16 Pecker started getting antsy, and he was frustrated, and he
17 said so to Michael Cohen.

18 So to show Pecker that Trump really did plan to pay
19 AMI back for the McDougal payoff, Cohen used his cell phone
20 to record a conversation with Donald Trump in September of
21 2016.

22 You will get a chance to hear that recording during
23 this trial.

24 On that tape, Cohen tells the defendant that he
25 will create a company to buy up McDougal's story from AMI.

Opening Statement - Mr. Colangelo

Page 870

1 Cohen tells the defendant that he spoke to Allen
2 Weisselberg, who is the Trump Organization Chief Financial
3 Officer, about how to set the whole thing up.

4 And on that recording, you will hear the defendant
5 in his own voice.

6 You will hear him ask Cohen: So what do we got to
7 the pay for this? One-fifty?

8 You will even hear Mr. Trump suggest in his own
9 voice, you will hear him suggest paying in cash.

10 After that conversation, Cohen then proceeded to
11 set up a shell company for the transfer.

12 It was less than six weeks to Election Day, and
13 Cohen then worked out a deal with David Pecker for AMI to
14 sell its rights to the McDougal story to Cohen's shell
15 company. That way AMI could get paid back and Trump would
16 then own the rights to the McDougal story.

17 Just as Cohen was doing, Pecker also used a
18 middleman to hide the true nature of the transaction.

19 He agreed to have another company put together a
20 fake invoice billing Cohen's shell company for so-called
21 advisory services.

22 Trump would become the new owner of Ms. McDougal's
23 story, but to any observer looking at those records neither
24 Pecker nor Trump would even appear as parties to the
25 transaction.

Opening Statement - Mr. Colangelo

Page 871

1 After the agreement was signed, but before any
2 money changed hands, David Pecker consulted with AMI's
3 general counsel.

4 And based on that conversation, Pecker got cold
5 feet.

6 He told Cohen that the deal was off, the deal to
7 transfer the rights to Cohen's shell company was off and AMI
8 would instead eat the cost of paying off McDougal.

9 So that's the second catch-and-kill deal that came
10 out of the Trump Tower agreement.

11 You will see all of that evidence.

12 You will see AMI learned about a blockbuster Trump
13 story about a Playboy playmate's extramarital affair with
14 Donald Trump.

15 The company coordinated directly with the
16 candidate to pay her off, to help the campaign by keeping
17 her quiet just months before the election.

18 You will see the company not only made that
19 corporate contribution, but that falsified other corporate
20 records to hide the details of the deal.

21 And you will hear the defendant's own voice on
22 tape, in a recorded conversation, working out the intention
23 for payment.

24 Next, about a month before the election, the
25 Washington Post published a news story on video, which the

Opening Statement - Mr. Colangelo

Page 872

1 evidence will show turned the rest of the presidential
2 campaign entirely upside-down.

3 On October 7th, 2016, The Post published a video of
4 Donald Trump, caught on a hot mic on the set of a television
5 show called Access Hollywood.

6 He didn't know he was being taped.

7 And you will see an email that the Washington Post
8 reporter emailed to the campaign's press secretary, Hope
9 Hicks, a few hours before the story ran.

10 And they sent her a transcript of the Access
11 Hollywood tape.

12 And the transcript depicts Donald Trump bragging
13 about sexual assault.

14 It shows, it depicts, and I'm quoting the
15 defendant's words from the transcript that you will see in
16 this trial: "You know, I'm automatically attracted to
17 beautiful women, I just start kissing them, it's like a
18 magnet, just kiss, I don't even wait, when you are a star
19 they let you do it, you can do anything, grab them by the
20 pussy, you can do anything." End quote.

21 Those were Donald Trump's words on a video that was
22 released one month before Election Day.

23 And the impact of that tape on the campaign was
24 immediate and explosive.

25 Prominent allies withdrew their endorsements; they

Lisa Kramsky,
Senior Court Reporter

Opening Statement - Mr. Colangelo

Page 873

1 condemned Donald Trump's language.

2 You will hear testimony that the Republican
3 National Committee even considered whether it was too late
4 to replace their own nominee and find another candidate for
5 the election a month before Election Day.

6 The defendant and his campaign staff were deeply
7 concerned that the tape would irreparably damage his
8 viability as a candidate and reduce his standing with female
9 voters in particular.

10 And they knew it was damaging not only because
11 Trump bragged about sexual assault, they knew it was
12 damaging not only because the language on the tape was crude
13 and vulgar, the campaign was also worried about the damage
14 the tape would cause precisely because it was on video
15 seeing and hearing a candidate in his own words, in his own
16 voice, in his own body language, his own gestures has a much
17 greater impact on voters than words on paper.

18 So the campaign went into immediate damage control
19 mode to blunt the impact of the tape.

20 Now, the defendant's initial public response to the
21 Access Hollywood tape was to call it locker room talk.

22 He told voters it was just words, not behavior, and
23 that's the context to what happened next.

24 One day after the Access Hollywood tape was
25 released, Dylan Howard, he's the National Enquirer's

Opening Statement - Mr. Colangelo

Page 874

1 Editor-in-Chief, told David Pecker that another woman had
2 come forward with the claim of a sexual encounter that she
3 had had with the defendant while he was married.

4 That woman was an adult film actress, a porn star
5 named Stormy Daniels.

6 As Pecker had promised and as they had done for the
7 last year, Howard got in touch with Michael Cohen at the
8 Trump Organization immediately.

9 Howard told Cohen about the story.

10 He connected him with Stormy Daniels' lawyer,
11 Keith Davidson, the same lawyer who had represented Karen
12 McDougal.

13 And Cohen then discussed the situation with Trump,
14 who was adamant that he did not want the story to come out.
15 Another story about sexual infidelity, especially with a
16 porn star, on the heels of the Access Hollywood tape could
17 have been devastating to his campaign.

18 So at Trump's direction, Cohen negotiated a deal
19 to buy Ms. Daniels' story in order to prevent American
20 voters from learning that information before Election Day.

21 Under that deal, another non-disclosure agreement,
22 Daniels agreed that she would not disclose the sexual
23 encounter in exchange for a payment of \$130,000.

24 But Trump directed Cohen to try to delay finalizing
25 the deal, to delay making any payment as long as possible;

Opening Statement - Mr. Colangelo

Page 875

1 while also at the same time preventing Daniels from
2 publicizing the story.

3 His hope was to delay it until after the election
4 and then not pay at all.

5 And Cohen was able to put it off for a time with a
6 series of excuses, but Daniels and her representatives
7 figured out that they were being strung along.

8 It became clear that the story would become public
9 if the deal wasn't finalized immediately.

10 So with pressure mounting and Election Day fast
11 approaching, Donald Trump agreed to the payoff and directed
12 Cohen to proceed.

13 Cohen tried several times to get Pecker to agree to
14 pay for this catch-and-kill deal, too, but Pecker was
15 unhappy that he had never been paid back for the Karen
16 McDougal deal or the Sajudin deal.

17 He was still willing to use AMI's resources to help
18 close the deal so long as someone else put up the money.

19 So Cohen discussed other payment options with Trump
20 and with Allen Weisselberg, the Chief Financial Officer of
21 the Trump Organization.

22 And Trump didn't want to write a check himself to
23 make the \$130,000 payment, so he asked Cohen and Weisselberg
24 to figure out some other way to make the payment.

25 And after discussing different possibilities with

Opening Statement - Mr. Colangelo

Page 876

1 Weisselberg, they agreed that Cohen would make the payment
2 through a shell company to make it harder to track.

3 But before putting up his own money, Cohen
4 confirmed with Trump that Trump would pay him back.

5 And at Trump's request, Cohen agreed to lay out
6 his own money for the payment to keep Stormy Daniels quiet.

7 Two weeks before the presidential election, on the
8 morning of October 26th, 2016, Cohen made two phone calls to
9 the defendant to confirm that he was finalizing the
10 arrangements. You will see the telephone records of those
11 calls.

12 Then Cohen walked across the street, he opened a
13 bank account in the name of a new shell company called
14 Essential Consultants, LLC, which he had created to carry
15 out the Stormy Daniels payoff.

16 He then transferred \$131,000 from the home equity
17 line of credit on his own home into the shell company's bank
18 account, and the next day Cohen wired 130 grand to Stormy
19 Daniels' lawyer to keep her quiet.

20 And as part of their efforts to try to keep the
21 entire scheme under wraps, Cohen gave false information to
22 the banks about the shell company's business purpose in the
23 account opening forms he was required to complete and in the
24 wire transfer records that he filled out describing the
25 purpose of the \$130,000 payment.

Opening Statement - Mr. Colangelo

Page 877

1 Cohen made that payment at Donald Trump's direction
2 and for his benefit, and he did it with a specific goal of
3 influencing the outcome of the election.

4 Now, look, no politician wants bad press, but the
5 evidence at trial will show that this was not spin or
6 communication strategy; this was a planned, coordinated
7 long-running conspiracy to influence the 2016 election, to
8 help Donald Trump get elected, through illegal expenditures,
9 to silence people who had something bad to say about his
10 behavior, using doctored corporate records and bank forms to
11 conceal those payments along the way.

12 It was election fraud. Pure and simple.

13 We will never know, and it doesn't matter, if this
14 conspiracy was the difference-maker in a close election, but
15 you will see evidence in the defendant's own words from his
16 social media posts, from his speeches at campaign rallies
17 and other events, you will see in his own words, making
18 crystal clear that he was certainly concerned about how all
19 of this could hurt his standing with voters and with female
20 voters in particular.

21 You will also see evidence that on election night,
22 as news outlets got closer to calling the election for
23 Donald Trump, Keith Davidson, he was the lawyer for both
24 Stormy Daniels and Karen McDougal, texted Dylan Howard at
25 the National Enquirer and he said, "What have we done?"

Opening Statement - Mr. Colangelo

Page 878

1 And about a month after the election, Pecker then
2 authorized AMI to release both Sajudin and McDougal from
3 their non-disclosure agreements.

4 So, having paid for the stories in order to keep
5 them from the public before Election Day, Pecker and AMI
6 then told both McDougal and Sajudin a month after the
7 election that they were no longer bound by the
8 non-disclosure agreements.

9 In January 2017, Pecker met again with Donald
10 Trump. This was before Mr. Trump was inaugurated. He was
11 still working primarily from Trump Tower here in Manhattan,
12 and they met privately in Trump's office. The defendant
13 thanked Pecker for handling the McDougal and Sajudin
14 stories, and he invited him to the inauguration.

15 And that summer, the defendant invited Pecker to
16 the White House.

17 Pecker brought his eyes and ears, Dylan Howard from
18 the National Enquirer, to that dinner.

19 And the defendant hosted a thank you dinner to
20 thank Pecker and AMI for their contributions to his
21 campaign.

22 There were a few other loose ends to deal with
23 after the election.

24 One was figuring out how Michael Cohen was going to
25 get paid back for the Stormy Daniels payoff.

Opening Statement - Mr. Colangelo

Page 879

1 In January 2017, before the defendant moved down to
2 Washington to begin his presidency, Cohen met with Allen
3 Weisselberg to talk about how Cohen was going to get
4 reimbursed for the payoff for Ms. Daniels.

5 Weisselberg, you will remember, was the Trump
6 Organization Chief Financial Officer, and he was one of the
7 defendant's longest serving and most trusted employee.

8 Neither Trump nor the Trump Organization could just
9 write a check to Cohen for \$130,000 with a memo line that
10 said, reimbursement for porn star payoff.

11 They had to disguise the nature of the repayment,
12 so they agreed to cook the books and make it look like the
13 repayment was actually income, payments for services
14 rendered instead of a reimbursement.

15 Weisselberg asked Cohen to bring a copy of a bank
16 statement for the Essential Consultants' account showing the
17 \$130,000 payment that Cohen had made to keep Daniels quiet
18 before the election.

19 Weisselberg and Cohen agreed to a total repayment
20 amount of \$420,000.

21 And here is how they got to that number.

22 They started with the \$130,000 that Trump owed
23 Cohen for the Stormy Daniels payoff.

24 Then they added \$50,000 for a separate
25 reimbursement Cohen was claiming which had to do with Tech

Opening Statement - Mr. Colangelo

Page 880

1 Services he paid for during the campaign.

2 That adds up to 180.

3 Then they agreed to double that amount to \$360,000
4 to account for taxes.

5 Now, of course, if Trump was just reimbursing
6 Cohen, there was no need to gross it up for taxes.

7 They doubled it because their plan was to call it
8 income instead of a reimbursement.

9 And if Cohen was getting money they were calling
10 income, he would have to pay taxes on it.

11 Cohen was close to a 50 percent tax bracket when
12 you consider federal and state and city tax, so to make him
13 whole on the \$180,000 that the defendant owed him, they had
14 to double the amount to 360.

15 Then he had added another \$60,000 as a year-end
16 bonus.

17 And all of that comes to a total of \$420,000.

18 And Allen Weisselberg wrote all of that down.

19 The bank statement that I told you about that he
20 asked Cohen to bring to their meeting, the bank statement
21 from the Essential Consultants LLC account, which showed the
22 \$130,000 wire that Cohen had made to Keith Davidson to keep
23 Stormy Daniels quiet, you will see in this trial, Allen
24 Weisselberg's handwriting down the side of that bank
25 statement laying out every one of the steps that I just

Opening Statement - Mr. Colangelo

Page 881

1 described, showing how they converted the \$130,000 payoff
2 amount to the 420 grand that Cohen was going to get paid
3 back, as a grossed up way to disguise it, not as a
4 reimbursement, but as income.

5 Cohen and Weisselberg then met with Trump, who
6 approved that repayment amount of 420 grand on the \$130,000
7 Stormy Daniels payment and a few others expenses.

8 Now, you will see evidence at trial that Donald
9 Trump was a very frugal businessman. He believed in
10 pinching pennies. He believed in watching every dollar. He
11 believed in negotiating every bill.

12 It's all over all of the books he has written.

13 He ran the Trump Organization with total control.

14 You will hear testimony about his relentless focus
15 on the bottom line.

16 But when it came time to pay Michael Cohen back for
17 the catch-and-kill deal, you will see that he didn't
18 negotiate the price down; he doubled it.

19 And he doubled it so they could disguise it as
20 income.

21 And you will hear evidence that the Trump
22 Organization was not in the practice of paying people twice
23 what they owed for anything.

24 This might be the only time that ever happened.

25 And Donald Trump's willingness to do so here shows

Opening Statement - Mr. Colangelo

Page 882

1 just how important it was to him to hide the true nature of
2 Cohen's illegal payment to Ms. Daniels and the overall
3 election conspiracy that they had launched in August of
4 2015.

5 When Cohen and Weisselberg met with the defendant
6 to agree on the doubled-up reimbursement amount, they
7 decided they would pay it back in a series of monthly
8 payments over the course of the entire year in 2017.

9 Now, \$420,000 spread over 12 payments comes out to
10 \$35,000 a month.

11 You will see that calculation in Allen
12 Weisselberg's handwritten notes, too.

13 So the defendant and Cohen and Weisselberg agreed
14 that every month Cohen would send a bogus invoice to the
15 defendant through the Trump Organization, falsely requesting
16 payments of \$35,000 for legal services rendered in a given
17 month of 2017 pursuant to a retainer agreement.

18 That was a double lie. There was no retainer
19 agreement.

20 Cohen was not getting paid for legal services
21 rendered in 2017. It was instead what they thought was a
22 clever way to pay Cohen back without being too obvious about
23 it.

24 And in early February of 2017, Cohen went down to
25 Washington, and he met with the defendant at the White

Opening Statement - Mr. Colangelo

Page 883

1 House, and they confirmed that repayment arrangement.

2 We are going to show you at trial a photo of Cohen
3 at the White House for that meeting.

4 And a few days later, after they met and confirmed
5 the whole plan, Cohen sent the first of his fake invoices to
6 the Trump Organization.

7 And a few days after that, Cohen got his first
8 reimbursement check.

9 In total, Cohen submitted 11 phony invoices by
10 email to the Trump Organization here in Manhattan so the
11 defendant could pay him back.

12 Each invoice repeated the lie that Cohen and
13 defendant had agreed on in advance, that Cohen was
14 requesting payment for legal services pursuant to a retainer
15 agreement which didn't exist.

16 Through these false business records, the defendant
17 intended to make sure that nobody learned about the Stormy
18 Daniels payoff and the illegal election fraud scheme
19 launched at the Trump Tower meeting in 2015.

20 The defendant's accounting staff at Trump Tower
21 here in Manhattan then processed every one of those invoices
22 as business records of the Trump Organization and retained
23 them in the Trump Organization's files.

24 The accounting staff recorded the reimbursements in
25 their general ledgers, falsely, as legal expenses with a

Opening Statement - Mr. Colangelo

Page 884

1 description of a retainer.

2 The accounting staff then prepared checks that each
3 included the description retainer.

4 The checks were stapled to the bogus invoices for
5 approval and signature.

6 The first two checks were paid from a trust the
7 defendant had created called the Donald J. Trump Revocable
8 Trust, which held all of the Trump Organization's assets
9 after he became president.

10 The defendant was the beneficiary of that trust.

11 Each of the remaining checks that were issued over
12 the course of 2017 were paid from the defendant's own bank
13 accounts.

14 And the defendant signed those checks, each of them
15 himself, while he was president.

16 And the Trump Organization maintained all of those
17 records, the false invoices, the vouchers with false
18 entries, the checks with check stubs with false entries at
19 Trump Tower here in Manhattan.

20 And with the final payment in December of 2017,
21 the defendant had repaid Cohen the full \$420,000 they had
22 agreed upon, and the monthly payments stopped.

23 Now, during this trial you will hear a lot about
24 Michael Cohen.

25 I suspect the defense will go to great lengths to

Opening Statement - Mr. Colangelo

Page 885

1 get you to reject his testimony precisely because it is so
2 damning.

3 You will learn, and we will be very upfront about
4 it, the fact that Michael Cohen, like other witnesses in
5 this trial, has made mistakes in his past.

6 For example, Cohen will tell you that when the
7 truth about the payoff to Stormy Daniels first began to come
8 to light in 2018, he lied.

9 He lied about it to protect his boss.

10 You will also learn that Michael Cohen has a
11 criminal record.

12 He will testify that in April 2018, the FBI raided
13 his residences and his office as part of an investigation
14 that included potential violations of federal campaign
15 finance law.

16 Cohen will also testify in this trial that he
17 ultimately pled guilty and went to jail for causing an
18 unlawful corporate contribution in connection with the Karen
19 McDougal payments and for making an excessive campaign
20 contribution in connection with the Stormy Daniels payoff.

21 (Whereupon, Senior Court Reporter Lisa Kramsky is
22 relieved by Senior Court Reporter Laurie Eisenberg, and the
23 transcript continues on the following page.)

24 *****

25

Lisa Kramsky,
Senior Court Reporter

Opening Statement - Mr. Colangelo

Page 886

1 (Continued from the previous page.)

2 He also pled guilty to and served time for tax
3 crimes and lying to a bank and lying to Congress.

4 And you'll also learn that Cohen has publicly
5 committed to making sure the Defendant is held accountable
6 for his role in this conspiracy.

7 The evidence will also show why you can credit
8 Michael Cohen's testimony, despite those past mistakes.

9 As we discussed in jury selection, you will need
10 to keep an open mind and carefully evaluate all of the
11 evidence that corroborates Michael Cohen's testimony and
12 the testimony of all of the witnesses.

13 Cohen's testimony will be backed up by testimony
14 from other witnesses you will hear from, including David
15 Pecker and Keith Davidson. It will be backed up by an
16 extensive paper trail of bank records, emails, text
17 messages, phone logs, business documents and other records
18 that we will show you, sometimes at length, during this
19 trial. And it will be backed up by Donald Trump's own
20 words on tape, in social media posts, in his own books,
21 and in video of his own speeches.

22 Now, as I said when I started, this case is about
23 a criminal conspiracy and a cover-up, an illegal
24 conspiracy to undermine the integrity of a presidential
25 election, and then the steps that Donald Trump took to

Opening Statement - Mr. Colangelo

Page 887

1 conceal that illegal election fraud.

2 At the end of the case, we are confident that you
3 will have no reasonable doubt that Donald Trump is guilty
4 of falsifying business records with the intent to conceal
5 an illegal conspiracy to undermine the integrity of a
6 presidential election.

7 And as you credit all of the evidence the People
8 will present, we ask you to use your common sense, look
9 past any distractions, look past any irrelevant sideshows
10 that may pop up during this trial. Tune out the noise.
11 Focus on the facts. Focus on the logical inferences that
12 follow from those facts. Focus on the evidence. Listen to
13 the testimony. Read the documents, the emails, the text
14 messages, the bank statements, the handwritten notes, all
15 of it.

16 And, after all of that evidence is in, we'll have
17 a chance to speak to you again during closing arguments.
18 My colleague, Joshua Steinglass, will go through all of
19 that evidence and explain that it, inescapably, leads to
20 only one conclusion: Donald Trump is guilty of 34 counts
21 of falsifying business records in the first degree.

22 THE COURT: Thank you, Mr. Colangelo.

23 Counsel.

24 MR. BLANCHE: Good morning.

25 Good morning, Your Honor.

Opening Statement - Mr. Blanche

Page 888

1 THE COURT: Good morning.

2 MR. BLANCHE: President Trump is innocent.

3 President Trump did not commit any crimes.

4 The Manhattan District Attorney's Office should
5 never have brought this case. You've heard this a few
6 times already this morning, and you're going to hear it a
7 lot more during this trial.

8 The People, the Government, they have the burden
9 of proof to prove President Trump guilty beyond a
10 reasonable doubt.

11 What that means, as Judge Merchan said a few
12 minutes ago, is that President Trump is presumed innocent.
13 He's cloaked in innocence. And that cloak of innocence
14 does not leave President Trump today. It doesn't leave him
15 at any day during this trial. And it won't leave him when
16 you all deliberate.

17 You will find that he is not guilty.

18 Now, President Trump, you've seen him, of course,
19 for years and years and years. You've seen him on
20 television. You've seen photos of him. You've seen
21 articles written about him. He's in some ways larger than
22 life. But, he's also here in this courtroom doing what any
23 of us would do: defending himself.

24 You're going to hear me, as I've done already
25 today, and others, even witnesses, refer to him as

Opening Statement - Mr. Blanche

Page 889

1 "President Trump".

2 This is a title that he has earned because he was
3 our 45th President. We will call him "President Trump" out
4 of respect for the office that he held from 2017 to 2021.
5 And as everybody knows, it's the office he's running for
6 right now. He's the Republican nominee.

7 But -- and this is important -- he's not just our
8 former President. He's not just Donald Trump that you've
9 seen on TV and read about and seen photos of. He's also a
10 man. He's a husband. He's a father. And he's a person,
11 just like you and just like me.

12 What the People just did for about 45 minutes is
13 present to you what appeared to be a very clean, nice
14 story.

15 It is not. It is not "simple", as the People just
16 described.

17 For one, and you heard the People admit this,
18 most of what you are going to hear about in this trial,
19 most of the conversations, most of the documents are from
20 2015, 2016, 2017, years and years ago, pre-COVID. And
21 you're going to hear witnesses talk about conversations,
22 meetings, people they met with from 2015.

23 The story that you just heard, you will learn, is
24 not true.

25 And at the end of this trial, there will be

Opening Statement - Mr. Blanche

Page 890

1 plenty of reasonable doubt.

2 Here is what I expect that you will learn
3 happened:

4 President Trump, for years, built a very large,
5 successful company. He employs thousands of people. It's a
6 purely private company. Not like AT&T or FedEx, publicly
7 traded.

8 And when he became President in 2017, he put up a
9 wall between himself and his company, as the People just
10 alluded to. He put his entire company in a Trust. He did
11 this so that he could run the country, and he wouldn't
12 have anything to do with his company while he was
13 President.

14 But, some of his employees, you'll learn,
15 continued to help record personal expenses that President
16 Trump incurred while he was President. Not surprising.
17 They had been doing that for many years. You'll hear
18 they're still doing that today.

19 So, when -- when President Trump became
20 President, when he took the Office of the Presidency in
21 2017, in January, Michael Cohen, who you heard the People
22 allude to, assumed the role of President Trump's personal
23 attorney.

24 And you will learn that each month in 2017,
25 Michael Cohen sent an invoice to some of the employees at

Opening Statement - Mr. Blanche

Page 891

1 the Trump -- at the Trump Tower, right here in Midtown,
2 for \$35,000. And on this invoice, Michael Cohen described
3 his work as "payment to the retainer agreement for legal
4 services rendered".

5 The invoice was processed. Somebody at Trump
6 Tower generated a check. The check was ultimately signed,
7 and there was a record in a ledger on President Trump's
8 personal records that reflected the invoice.

9 For nine of the checks, the check made its way
10 down to the White House, and President Trump signed it.

11 You'll hear that he's the only signatory on his
12 personal checking account, which is why he signed the
13 check.

14 So, what on Earth is a crime? What is a crime
15 about what I just described?

16 This business records violation that the People
17 have brought against President Trump, the 34 counts,
18 ladies and gentlemen, are really just 34 pieces of paper,
19 the 34 counts of the invoices that Mr. Cohen sent to the
20 folks at Trump Tower, the checks that were generated
21 because of that invoice, and then the ledger notation from
22 the invoice that said "for retainer agreement and legal
23 services".

24 None of this was a crime.

25 Now, you just heard the People's theory about

Opening Statement - Mr. Blanche

Page 892

1 that \$35,000, that it really wasn't a monthly retainer,
2 that Michael Cohen was actually trying to cover up with
3 President Trump the payback of this \$130,000 payment to
4 Stormy Daniels, who also goes by Ms. Clifford, Stephanie
5 Clifford.

6 You'll hear that Ms. Clifford/Ms. Daniels, did,
7 in fact, sign an NDA in October of 2016 in exchange for
8 \$130,000.

9 But, think for a moment of what the People just
10 told you. President Trump did not pay Mr. Cohen back
11 \$130,000. President Trump paid Michael Cohen \$420,000.

12 And in the same breath, the People told you that
13 President Trump is known as a frugal businessman, that he
14 pinches pennies.

15 Ask yourself: Would a frugal businessman, would a
16 man who pinches pennies repay \$130,000 debt to the tune of
17 \$420,000?

18 More significantly than that, ladies and
19 gentlemen, you're going to learn that this was not a
20 payback. The \$35,000 a month was not a payback to
21 Mr. Cohen for the money that he gave to Ms. Daniels.

22 He was President Trump's personal attorney.

23 You will see documents, you will see emails. His
24 signature block, Michael Cohen's signature block in 2017
25 said "Michael Cohen, Personal Attorney to President Donald

Opening Statement - Mr. Blanche

Page 893

1 J. Trump". You will hear that he told people that he
2 served as President Trump's personal attorney. You will
3 hear that he did legal work for President Trump and the
4 First Lady as his personal attorney.

5 Now, the People talk about the ledger. I
6 mentioned the ledger a few times.

7 Listen, the ledger is just a fancy way of
8 describing how folks at Trump Tower, employees that work
9 for President Trump kept track of the money that came in
10 and the money that went out. There's nothing fancy about a
11 ledger. It's something, I suppose, like a checkbook, where
12 you keep track of what you're spending money on.

13 And I expect that you will learn that the record,
14 the ledger that was used in this case that President Trump
15 is charged in part with, that the information that was
16 placed in that ledger was done by someone named Deb
17 Tarasoff. I expect she will testify.

18 You will hear that she's a woman who has worked
19 for President Trump for decades.

20 Nobody is going to say she did anything wrong. I
21 don't expect the People will say she is part of this
22 scheme.

23 What she will tell you is she had a conversation
24 with another boss, someone who she worked for, another
25 accountant, someone who has nothing to do with this; and

Opening Statement - Mr. Blanche

Page 894

1 she was told when she got the invoice from Mr. Cohen to
2 call it "legal expense", which is exactly what the invoice
3 said. And that's exactly what she did. And then, after
4 recording it, she generated a check, which was her job.

5 And then, again, for nine of the eleven checks,
6 the checks made their way from Trump Tower, here in
7 Midtown, to 230 miles down south to the White House, where
8 they were signed.

9 But -- and you heard this again from the People.
10 I am not saying anything controversial. President Trump
11 had nothing to do, had nothing to do with the invoice,
12 with the check being generated, or with the entry on the
13 ledger.

14 Ms. Tarasoff isn't going to say she had any
15 conversations with President Trump: Hey, how should I book
16 this? How should I book this to keep it secret and keep it
17 quiet?

18 The invoice says it's for services rendered. And
19 it's Michael Cohen. He's a lawyer. He worked for The Trump
20 Organization, you'll learn, for many years.

21 You won't hear any of that.

22 Her boss, the person who told her how to book it,
23 he's not gonna say he talked to President Trump about it.
24 He's not going to say that he called the White House and
25 interrupted a meeting as President Trump was running the

Opening Statement - Mr. Blanche

Page 895

1 country and said: Hey, we got this invoice, I know we're
2 trying to cover it up here.

3 Absolutely not.

4 You'll learn President Trump had nothing to do
5 with any of the 34 pieces of paper, the 34 counts, except
6 he signed on to the checks, in the White House while he
7 was running the country.

8 That's not a crime.

9 So -- and some of you heard this last week during
10 jury selection. What are the People going to do? I don't
11 expect they're going to dispute what I just said. I don't
12 expect they're going to call a witness that says that
13 President Trump had anything to do with what was written
14 on the ledger, with generating the check, with the invoice
15 coming in.

16 So, you heard last week, and I expect you'll hear
17 it during this trial, this idea of "accomplice liability";
18 the idea that the People can get around the complete lack
19 of knowledge or intent by President Trump.

20 And, look, the reality is, President Trump is not
21 on the hook, is not criminally responsible for something
22 that Mr. Cohen may have done years after the fact. The
23 evidence will prove otherwise.

24 You also heard a lot of -- a lot of communication
25 about the 2016 election. The People just told you that the

Opening Statement - Mr. Blanche

Page 896

1 reason why these invoices were recorded the way they were
2 recorded way after the election -- President Trump was
3 already in office -- was to cover up for Mr. Cohen,
4 suggesting that Mr. Cohen was somehow trying to
5 influence -- "influence" is the word they used -- the 2016
6 election.

7 I have a spoiler alert. There is nothing wrong
8 with trying to influence an election. It's called
9 democracy.

10 They put something sinister on this idea, as if
11 it was a crime. You'll learn it's not.

12 Michael Cohen paying Stormy Daniels or Stephanie
13 Clifford \$130,000 in exchange for her agreeing to not
14 publicly spread false -- false claims about President
15 Trump is not illegal.

16 I'm going to say that again. Entering into a
17 non-disclosure agreement --

18 MR. COLANGELO: Objection.

19 THE COURT: Sustained.

20 MR. BLANCHE: Entering into a non-disclosure
21 agreement is perfectly legal.

22 MR. COLANGELO: Objection.

23 THE COURT: Overruled.

24 MR. BLANCHE: You will learn that companies do
25 that all the time with some regularity. Executives, people

Opening Statement - Mr. Blanche

Page 897

1 who are wealthy, people who are famous enter into
2 non-disclosure agreements regularly, and there's nothing
3 illegal about it.

4 I expect that you will learn that when
5 Ms. Daniels threatened to go public with her false claim
6 of a sexual encounter with President Trump back in 2008
7 [sic], that it was, as the People just said, very close
8 to the election. And it was almost an attempt by
9 Ms. Clifford/Ms. Daniels to extort President Trump.

10 MR. COLANGELO: Objection.

11 THE COURT: Sustained.

12 MR. BLANCHE: It was sinister. And it was an
13 attempt to try to embarrass President Trump, to embarrass
14 his family.

15 Because, as the People alluded to, at that time
16 there were all kinds of salacious allegations going out,
17 going around about President Trump, and it was damaging to
18 him and damaging to his family.

19 And you heard and you will hear during this trial
20 that President Trump fought back, like he always does and
21 like he's entitled to do, to protect his family, his
22 reputation and his brand. And that is not a crime.

23 You heard the People talk about this term "hush
24 money payments", and I expect you'll hear that term used
25 during the trial.

Opening Statement - Mr. Blanche

Page 898

1 Again, entering into an agreement with another
2 individual -- you'll hear this agreement was negotiated by
3 lawyers.

4 MR. COLANGELO: Objection.

5 THE COURT: Please approach.

6 (Whereupon, the following proceedings were held
7 at sidebar:)

8 THE COURT: Tell me what the objection is.

9 MR. COLANGELO: Your Honor specifically excluded
10 presence of counsel defense.

11 MR. BLANCHE: Sorry, Your Honor.

12 There will be testimony from Mr. Cohen that he
13 was a lawyer, and there will be testimony he was working
14 with Mr. Davidson, also a lawyer.

15 THE COURT: I'll direct you stay away from it.

16 MR. BLANCHE: Yes.

17 So, it is true that in their opening, the People
18 talked about how Mr. Pecker is going to talk about his
19 communications with the General Counsel as well, which is
20 also the same issue.

21 THE COURT: Mr. Pecker is not on trial here.

22 MR. BLANCHE: I understand.

23 (Whereupon, the following proceedings were held
24 in open court:)

25 THE COURT: The objection is sustained.

Opening Statement - Mr. Blanche

Page 899

1 That last comment is stricken.

2 MR. BLANCHE: There is nothing illegal about
3 entering into a non-disclosure agreement. Period.

4 Now, the People talked about Michael Cohen. And
5 there are going to be a lot of witnesses in addition to
6 Mr. Cohen. You're going to hear myself, the other folks
7 that are working with President Trump cross-examine, as
8 the judge talked about, these witnesses. Some we'll
9 cross-examine a lot. Some very little, if at all.

10 But, one witness who you will hear a lot about is
11 Michael Cohen.

12 Mr. Cohen served as President Trump's attorney
13 for many years, long before President Trump became
14 President. He served as his personal attorney, working at
15 Trump Tower, being paid for by the Trump companies.

16 And then, as I mentioned, in 2017, he served as
17 his -- as the personal attorney to President Trump in
18 2017, after President Trump took office.

19 You will learn that shortly after the election in
20 2016, Michael Cohen wanted a job in the administration. He
21 didn't get one.

22 You'll hear that he was loyal. He was very loyal
23 to President Trump and the companies for years. He
24 defended President Trump on television, in printed media,
25 publicly, privately.

Opening Statement - Mr. Blanche

Page 900

1 But, unbeknownst to President Trump, in all the
2 years that Mr. Cohen worked for him, Mr. Cohen was also a
3 criminal. Apart from his work for President Trump and the
4 Trump companies, he cheated on his taxes, he lied to
5 banks, he lied about side businesses he had with taxi
6 medallions, among other things.

7 And as the People alluded to, in 2018, he got
8 caught.

9 Now, shortly after getting caught in 2018, you
10 will learn that he made a decision. The decision that he
11 made was to blame President Trump for virtually all of his
12 problems.

13 He had been eventually disbarred as an attorney.
14 He's a convicted felon. And he also is a convicted
15 perjurer. He is an admitted liar.

16 For many, many years, going back before President
17 Trump became President, even before Michael Cohen started
18 working for The Trump Organization, you'll learn that
19 Michael Cohen was obsessed with President Trump. He is
20 obsessed with President Trump even to this day.

21 Today, Michael Cohen has podcasts, two of them.
22 He goes on TV, X, TikTok, other social media platforms,
23 and he rants and he raves about President Trump. He
24 criticizes President Trump. He has talked extensively
25 about his desire to see President Trump go to prison. He

Opening Statement - Mr. Blanche

Page 901

1 has talked extensively about his desire to see President
2 Trump's family go to prison. He has talked extensively
3 about President Trump getting convicted in this case.

4 As a matter of fact, you will learn that last
5 night, 12 hours ago, Mr. Cohen, on a public forum, said he
6 had a mental excitement about this trial and his
7 testimony. He called President Trump, just last night, a
8 despicable human being, among other things. And he said
9 that he wanted to see President Trump in an orange
10 jumpsuit. That was last night.

11 But, he says similar things multiple times a week
12 during the entire pendency of this case and even before
13 this case was brought.

14 You'll learn that Mr. Cohen has misrepresented
15 key conversations where the only witness who was present
16 for the conversation was Mr. Cohen and, allegedly,
17 President Trump.

18 He has a goal, an obsession with getting Trump.
19 And you're going to hear that.

20 I submit to you that he cannot be trusted.

21 Separately from his obsession with President
22 Trump and his obsession to get President Trump, on
23 multiple occasions Mr. Cohen has testified under oath and
24 lied.

25 MR. COLANGELO: Objection.

Opening Statement - Mr. Blanche

Page 902

1 THE COURT: Sustained.

2 MR. BLANCHE: He walked -- he has walked into a
3 courtroom very near here, raised his right hand, and swore
4 to tell the truth. And now he will tell you, I expect,
5 that he was lying.

6 MR. COLANGELO: Objection.

7 THE COURT: Sustained.

8 Please approach.

9 (Whereupon, the following proceedings were held
10 at sidebar:)

11 MR. COLANGELO: There is no showing that
12 Mr. Cohen testified falsely in any of the proceedings
13 that Mr. Blanche is referring to.

14 MR. BLANCHE: What I just said is that he
15 testified that he testified falsely. He will testify that
16 when he pled guilty in front of Judge Pauley, he lied.

17 MS. HOFFINGER: That's not what he said.

18 MR. BLANCHE: That's what he said. He did say
19 that.

20 THE COURT: That's not what is standing.

21 I don't know what you're testifying about from
22 the podium.

23 We'll hear it from the witness stand.

24 MR. BLANCHE: They can use it against me.

25 THE COURT: That's in dispute. I read it's in

Opening Statement - Mr. Blanche

Page 903

1 dispute. I've heard it's in dispute.

2 You're not going into that.

3 MR. COLANGELO: Just to confirm, it's disputed
4 both in the Pauley trial and in Federal Court in front of
5 Judge Furman.

6 MR. BLANCHE: It's his words. He said -- the
7 question was asked, "Were you telling the truth when you
8 testified before Judge Pauley?"

9 He said, "No."

10 They asked, "Were you lying under oath?"

11 And he said, "Yes."

12 MS. HOFFINGER: He said he lied across the
13 street.

14 MS. NECHELES: It is across the street.

15 MR. COLANGELO: That's not what Mr. Blanche said.
16 He said he lied across the street.

17 Second, if you put the entire testimony in
18 context and full --

19 MR. BLANCHE: It --

20 THE COURT: Relax. Relax.

21 Let him speak. I need to hear what he's saying.

22 MR. COLANGELO: Both in his further testimony in
23 that proceeding and in written submissions at his federal
24 proceeding, he clarified and explained his testimony and
25 said that he was not lying when he pled guilty, said he

Opening Statement - Mr. Blanche

Page 904

1 was prosecuted -- believed he was prosecuted unfairly.

2 THE COURT: This is an opening statement. It's
3 not argument.

4 If you have this at the end of the trial, you can
5 argue it at summations.

6 I don't want to hear it now.

7 MS. NECHELES: Can't Mr. Blanche say: I expect
8 the evidence to say; we heard from the prosecutor; we
9 expect the evidence to say; we don't expect him to say?

10 THE COURT: It's argument.

11 You can bring it up on summation.

12 (Whereupon, the following proceedings were held
13 in open court:)

14 THE COURT: The objection is sustained.

15 MR. BLANCHE: You will learn, ladies and
16 gentlemen, that Michael Cohen has pled guilty to lying
17 under oath.

18 That means, to be clear, that just like I expect
19 witnesses will come in here and raise their right hand and
20 swear to tell the truth and then testify, that means that
21 Mr. Cohen did that, raised his right hand, swore to tell
22 the truth, and then lied. And admitted that. Pled guilty
23 to lying. Under oath.

24 So, you have two meaningful and significant
25 issues with Mr. Cohen: His obsession with President

Opening Statement - Mr. Blanche

Page 905

1 Trump, and his desire to see President Trump go to jail in
2 this case. His entire financial livelihood with podcasts.
3 He's written several books. He's frequently on the media.
4 His entire financial livelihood depends on President
5 Trump's destruction.

6 And, second, the fact -- admitted fact that he
7 has lied under oath.

8 I submit to you -- and I will talk to you again,
9 as Judge Merchan said, at the end of the case -- that
10 given this, you cannot make a serious decision about
11 President Trump relying on the words of Michael Cohen.

12 There will be other witnesses.

13 I expect Ms. Clifford/Stormy Daniels will
14 testify. She is, similarly, extremely biased against
15 President Trump.

16 You will hear that he met her several years ago,
17 in 2006. I may have said 2008 earlier. In 2006, some
18 18 years ago.

19 Then, at the time, as some of you may remember,
20 President Trump was running a very popular TV show called
21 The Apprentice, which was looking -- always looking for
22 new opportunities and had a series of communications with
23 Ms. Daniels. But, ultimately, it did not work out.

24 Since then, Ms. Clifford has made a living off of
25 these communications, even though she publicly denied any

Opening Statement - Mr. Blanche

Page 906

1 improper relationship in writing.

2 You will hear that in the weeks and months
3 leading up to the 2016 election, she saw her chance to
4 make a lot of money, \$130,000. And it worked. She got an
5 NDA, and Michael Cohen paid her that money. He did that in
6 exchange for her silence. Which, of course, didn't work.

7 And since this story came out in 2018, became
8 public, she's made hundreds of thousands of dollars
9 because of it. She also wrote a book. She was paid for a
10 documentary.

11 And you'll also learn that courts have sided with
12 President Trump in legal disputes between Ms. Daniels and
13 President Trump and that she owes him somewhere around
14 \$600,000 as a result of those cases.

15 But, I'm going to say something else about her
16 testimony, and this is important. It doesn't matter.

17 What I mean by that is, I expect you will learn
18 that Ms. -- that Ms. Daniels doesn't have any idea. She
19 doesn't know anything about the charged 34 counts in this
20 case. She has no idea what Michael Cohen wrote on the
21 invoice. She has no idea how it was booked at Trump Tower.
22 And she has no idea about the checks that are also charged
23 in this indictment.

24 So, her testimony, while salacious, does not
25 matter.

Opening Statement - Mr. Blanche

Page 907

1 Now, I want to talk to you for just a few minutes
2 about what the People spent a long time talking about,
3 which is this catch and kill scheme between Mr. Pecker at
4 AMI and President Trump and Michael Cohen as the part of
5 his lawyer. The People used the word "conspiracy".

6 You will hear and see that there are 34 counts in
7 this indictment. "Conspiracy" is not one of them.
8 President Trump is not charged with any "conspiracy".
9 That's a word the People have chosen to use.

10 The reality is, there's nothing illegal about a
11 scheme. There's nothing illegal about what you will hear
12 happened among AMI and National Enquirer and Mr. Pecker
13 and President Trump.

14 It happens -- I expect you will hear shortly,
15 this sort of thing happens regularly, that newspapers make
16 decisions about what to publish, when to publish, and how
17 to publish. It happens with politicians, with wealthy
18 people, with famous people.

19 It's not a scheme. Unless a scheme means
20 something that doesn't matter, that's not illegal, that's
21 not against the law.

22 As part of this, the People talked about a catch
23 and kill idea. Catch and kill. That you purchase the
24 rights to a story.

25 But, I encourage you to listen over the next

Opening Statement - Mr. Blanche

Page 908

1 couple of days -- well, listen to the whole trial, but
2 certainly over the next couple of days when you hear
3 Mr. Pecker testify about this supposed catch and kill.
4 Listen to what he says about his motivation to sell
5 magazines, not surprising, and whether it really is a
6 catch and kill, and whether what the People just told you
7 lines up with what the witness is going to say on that
8 stand.

9 So, I'm going to sit down.

10 Before I do, I am going to say the same thing
11 that the People said to you. Please listen to the
12 evidence. Listen to the testimony. Listen to the testimony
13 of Michael Cohen. Listen to the communications that folks
14 had, the meetings that people had, 2015, 2016, 2017, years
15 and years ago. And think about whether it rings true that
16 what they're saying is accurate and lines up with the
17 other evidence that you hear.

18 Listen to the folks that still work at Trump
19 Tower, some of them, about what they did when they got
20 those various documents that make up the 34 counts. Listen
21 about whether that has anything to do with President Trump
22 or anything to do with AMI or a catch and kill scheme or
23 the 2016 election.

24 If you do that, I submit that you will reach the
25 conclusion that it does not.

Opening Statement - Mr. Blanche

Page 909

1 And, listen, use your common sense. We're
2 New Yorkers. That's why we're here.

3 You told all of us, you told the Court, you told
4 me, that you would put aside whatever ideas you have of
5 President Trump from the past eight years, the fact that
6 he was President, the fact that he is running again for an
7 election this November. And we trust you to do that. We
8 do. We trust that you're going to decide this case based
9 upon the evidence that you hear in this courtroom and
10 nothing else.

11 And if you do that, there will be a very swift, a
12 very swift not guilty verdict.

13 Thank you.

14 THE COURT: Thank you, Mr. Blanche.

15 Counsel, please approach.

16 (Whereupon, the following proceedings were held
17 at sidebar:)

18 THE COURT: I know you want to take a short
19 break. You can do that.

20 But, I need to have the jurors out of here by
21 12:30.

22 MR. STEINGLASS: What time is it now?

23 THE COURT: Ten to twelve.

24 We can put your witness on the stand for ten
25 minutes, maybe fifteen minutes, tops, or we can adjourn

Proceedings

Page 910

1 today and start tomorrow. It's up to you.

2 MR. STEINGLASS: What do you think? Start?

3 We need five minutes to get him upstairs.

4 (Whereupon, the following proceedings were held
5 in open court:)

6 THE COURT: We're going to take a very short
7 ten-minute recess.

8 I ask you to please step out. Follow the
9 instructions of the officer.

10 (Whereupon, the jurors and the alternate jurors
11 are excused.)

12 THE COURT: See you back at 12 noon.

13 (Whereupon, a recess is taken.)

14 (Whereupon, Senior Court Reporter Laurie
15 Eisenberg is relieved by Senior Court Reporter Theresa
16 Magnicarri, and the transcript continues on the following
17 page.)

18

19

20

21

22

23

24

25

Pecker - Direct/Steinglass

Page 911

1 THE CLERK: Case on trial continues. All parties
2 are present. Appearances remain the same. Outside the
3 presence of the jury.

4 THE COURT: Bring in the jury.
5 (Jury entering courtroom.)

6 THE COURT: You can be seated.
7 Thank you.

8 THE CLERK: The jury is present and properly
9 seated.

10 THE COURT: People, please call your first
11 witness.

12 MR. STEINGLASS: The People call David Pecker.
13 (Witness entering courtroom.)

14 COURT OFFICER: Remain standing.

15 THE CLERK: Please raise your right hand.
16 Do you solemnly swear or affirm that the testimony
17 that you are going to give before this Court and jury shall
18 be the truth, the whole truth and nothing but the truth, do
19 you so swear or affirm?

20 THE WITNESS: I do.

21 D-A-V-I-D P-E-C-K-E-R, called as a witness on behalf of the
22 People, was duly sworn by the Clerk of the Court, upon being
23 examined, testified as follows:

24 THE CLERK: Please be seated.

25 COURT OFFICER: Please state your name.

Pecker - Direct/Steinglass

Page 912

1 THE WITNESS: David Pecker.
2 COURT OFFICER: Spelling your last name.
3 THE WITNESS: P-E-C-K-E-R.
4 COURT OFFICER: County of residence.
5 THE WITNESS: Barfield, Connecticut.
6 THE COURT: Good afternoon, Mr. Pecker.
7 You may inquire.
8 MR. STEINGLASS: May I inquire?
9 THE COURT: Yes.
10 MR. STEINGLASS: Thank you.
11 DIRECT EXAMINATION
12 BY MR. STEINGLASS:
13 Q. Good afternoon, Mr. Pecker.
14 A. Good afternoon.
15 Q. I'm sorry to start with this question. How old are
16 you?
17 A. Seventy-two.
18 Q. Are you married?
19 A. Yes.
20 Q. How long have you been married?
21 A. Thirty-six years.
22 Q. Can you briefly describe your educational background
23 for the jury.
24 A. Yes. I have a Bachelor's Degree from Pace University,
25 and I also received a Doctorate Degree that was granted to me

1 from Pace.

2 Q. I am going to ask you to slide your chair a little bit
3 forward so your mouth is a little closer to the microphone.

4 A. Okay.

5 Q. That's better. Thank you.

6 Are you currently employed?

7 A. I'm self-employed now.

8 Q. What are you doing now?

9 A. I do consulting work.

10 Q. And is one of the companies you consult for your prior
11 employer?

12 A. Yes, I do.

13 Q. Who was your prior employer?

14 A. My prior employer was American Media.

15 Q. Is that known as AMI for short?

16 A. AMI is correct.

17 THE COURT: I apologize for interrupting you. We
18 didn't give the jurors an opportunity to get some writing
19 materials.

20 Do any of you want writing materials?

21 Raise your right hand.

22 Keep your hand up.

23 I apologize for interrupting.

24 MR. STEINGLASS: No problem.

25 THE COURT: Does everyone who wants a pad or a pen

Pecker - Direct/Steinglass

Page 914

1 have one?

2 Okay. Great.

3 Sorry, Mr. Steinglass.

4 MR. STEINGLASS: No problem.

5 Q. So I think we left off, you were telling us what kind
6 of company AMI is.

7 A. American Media is a publishing company that primarily
8 publishes celebrity magazines and it used to publish health and
9 fitness magazines.

10 Q. Can you give us some examples of other AMI
11 publications?

12 A. Yes. The National Enquirer, the Globe, Life & Style,
13 In Touch, Closer, Us Weekly.

14 Q. Star?

15 A. Star.

16 And on the health and fitness titles, it was Shape and
17 Muscle & Fitness and Flex.

18 Q. What was your title at AMI?

19 A. I was Chairman, President and CEO.

20 Q. Did you also have an ownership interest?

21 A. Yes, I owned 10 percent of the company.

22 Q. How long did you work at AMI?

23 A. From March 1999 through August of 2020.

24 Q. During the period from 2015, say, to 2017, what was
25 your title?

Pecker - Direct/Steinglass

Page 915

1 A. The same title, Chairman, President and CEO.

2 Q. And can you describe a little bit for the jury what
3 your responsibilities were in those titles?

4 A. In a publishing environment you have multiple different
5 departments.

6 On the editorial side, you have Editor-in-Chief, and
7 you have the staff, managing editors, freelancers, reporters.

8 And an on the operations side, you have various
9 different departments; accounting department, finance
10 department, and you have a legal department, Human Resources
11 Administration. All those departments reported to the directors
12 of each of those units that I just mentioned, and that is the
13 leadership team.

14 And everybody, all those people, reported directly to
15 me.

16 Q. So as CEO and President and Chairman, did you have the
17 final say over publishing decisions, including which stories
18 would get published and which stories would not get published?

19 A. Yes, I had the final say.

20 On the celebrity side of the magazine industry, at
21 least on the tabloid side, we used checkbook journalism and we
22 pay for stories. So I gave a number to the editors that they
23 could not spend more than \$10,000 to investigate or produce or
24 publish a story. So anything over \$10,000 that they would spend
25 on a story, that would have to be vetted and brought up to me if

Pecker - Direct/Steinglass

Page 916

1 they were going to spend more for approval.

2 Q. In addition to having to approve expenditures, did you
3 also have final kind of editorial say; in other words, the
4 ability to determine that a particular story was not going to be
5 run, or a particular story was going to be run?

6 A. Being in the publishing industry for 40 years, I
7 realized early in my career that the only thing that was
8 important is the cover of a magazine. So when the editors
9 produce a story, or prepare the cover, we would have a meeting
10 and they would present to me what the story would be, what the
11 concept was, what the cost was going to be.

12 Q. And if the story involved, I guess for lack of a better
13 way to say it, a big story, or a famous person, did you have the
14 final say on whether or not to publish that story?

15 A. Yes, I did.

16 Q. Where generally was your office located?

17 A. We were located in Boca Raton, Florida, and in
18 Manhattan on -- I have been out a little bit, for a while, on
19 the corner of Broad and Water Street.

20 Q. Okay.

21 Are you familiar with the term "editor meetings?"

22 A. Yes, I am.

23 Q. Can you explain to the jury what is an editor meeting,
24 what are editor meetings?

25 A. As the editors prepare and put a story together, and

Pecker - Direct/Steinglass

Page 917

1 spending these expenditures to produce that, and then coming up
2 to producing a cover, I would have a meeting for the editors to
3 present their covers to me, and then I would take a look and see
4 if the cover that's being presented meets some qualifications.

5 As an example, we have a large research department, and
6 if the cover subject was going to be presented, I personally
7 wanted to make sure that the cover subject is not in the sole
8 interest of the editor, that it was interested in who our
9 audience is.

10 We would have a lot of conversations with respect to
11 why did they pick that subject, is the topic over right now,
12 what the cover line is going to be, what the photo is, and then
13 that's how.

14 So we would have these meetings before the publication
15 was finalized, and then we would have these meetings sometimes
16 once or twice a week.

17 Q. And did you participate in editor meetings?

18 A. Yes, I participated in all of them.

19 Q. Were there editor meetings for all of AMI's
20 publications or on certain publications?

21 A. Primarily the celebrity titles, the tabloids.

22 Q. How about the National Enquirer?

23 A. Yes, for the National Enquirer, yes.

24 Q. Was that AMI's most well known tabloid, to use your
25 word?

Pecker - Direct/Steinglass

Page 918

1 A. Yes.

2 Q. During the period from 2015 to 2017, what were the last
3 four digits of your work cellphone number?

4 A. 7501.

5 Q. Is it 01 or 91?

6 A. 705-7591.

7 Q. You gave us more than that.

8 All right.

9 And your personal cellphone, just the last four digits?

10 A. 5955.

11 Q. How about the last four digits of your last phone
12 number in New York City?

13 A. 4899.

14 Q. And did you have a separate office phone number in
15 Florida?

16 A. Yes, I did.

17 Q. You don't happen to remember the last four digits of
18 that number?

19 A. Yes, I do now; 1221.

20 Q. Okay. This isn't a quiz.

21 During the same period, did you have an AMI email
22 address?

23 A. Yes, I did.

24 Q. How many email addresses?

25 A. I had two email addresses.

Pecker - Direct/Steinglass

Page 919

1 Q. And without giving us the beginning portion of those
2 email addresses, did they end with the domain name AMIlink.com?

3 A. Yes, they did.

4 Q. Now, why did you have two separate email addresses at
5 AMIlink.com?

6 A. Well, the reason being, I would receive hundreds of
7 emails a day and I had my assistants look at all of my emails
8 to vet out which ones I should look at right away, which ones
9 were important or not.

10 I also had a second email address which was private
11 because I would receive emails from the Human Resources
12 Department on salaries and raises and compensation, or sometimes
13 other sensitive issues which I didn't want my assistants to see,
14 so I had two.

15 Q. So without giving us the exact name of those email
16 addresses, is it fair to say you had one kind for general
17 purposes and one for purposes that you didn't want other people
18 to have access to?

19 A. That's correct.

20 Q. And in addition to H.R. matters, like salary, did you
21 also sometimes use the more restrictive email address when you
22 were dealing with sensitive subjects or sources?

23 A. Yes, for confidential I would.

24 Q. Are you here today pursuant to a subpoena?

25 A. Yes, I am.

1 Q. And are you represented by counsel?

2 A. Yes, I am.

3 Q. Is your lawyer present in court?

4 A. Yes, he is.

5 Q. Are you familiar with somebody named Dylan Howard?

6 A. Yes, I am.

7 Q. Who is Dylan Howard?

8 A. Dylan Howard was a reporter, a celebrity reporter for
9 American Media. He was also promoted over the years to become
10 Editor-in-Chief of the National Enquirer, Editor of Star. He
11 was the Managing Director of Radar, a digital celebrity site.
12 And he was also the Chief Content Officer of the company.
13 So, which means, to clarify, that means that all the editors
14 reported directly to Dylan Howard.

15 Q. So he was kind of like Chief Editor-in-Chief?

16 A. That's correct.

17 Q. But, in addition to that, he was also the
18 Editor-in-Chief of the National Enquirer?

19 A. Yes, he was.

20 Q. And was that true during the periods from 2015 to
21 2017?

22 A. Yes, that's correct.

23 Q. In that capacity, who was his direct supervisor?

24 A. Dylan reported directly to me.

25 Q. And can you describe for the jury a little bit about

Pecker - Direct/Steinglass

Page 921

1 what Dylan Howard's roles were in each of those two jobs. I
2 know you said he had a lot of jobs, but the two that I'm asking
3 about in particular, being Editor-in-Chief of the National
4 Enquirer and kind of being the Editor-in-Chief of all the AMI
5 publications, the Chief Content Officer?

6 A. The difference about celebrity magazines versus other
7 magazines, these celebrity or tabloids are all weekly. So
8 they're all weeklies. The editor, as Dylan, would receive, as I
9 call it, his report card every week based on what the sales
10 would be. So you would know immediately whatever decision Dylan
11 made or we made for the cover of the magazine, you would
12 immediately see what the sales were. If it was a mistake, you
13 didn't do it again. That's one.

14 The other piece, the other portion of the job is, all
15 of the sources, freelancers, editors, photographers, writers,
16 all reported up to different department heads, but they all
17 ended up reporting to Dylan.

18 Q. As Chief Content Officer?

19 A. As Chief Content Officer.

20 Q. Now -- withdrawn.

21 So is it fair to say that Dylan Howard kind of ran the
22 network of sources for AMI, all of AMI's publications?

23 A. Yes, because his job was to make sure that we would
24 have the most exclusive and current content.

25 Q. Now, when it came to -- I don't know how to say this,

Pecker - Direct/Steinglass

Page 922

1 juicy stories, did he run those decisions by you?

2 A. Yes, he did.

3 Q. Was part of his responsibilities to maintain
4 relationships and cultivate relationships with potential
5 sources?

6 A. Yes, it was a very important part of his job.

7 Q. And forgive me for asking this question, I know it's a
8 little bit basic, can you explain, what is a source?

9 A. Yes.

10 As an editor of a tabloid magazine, you develop over
11 the years a group of sources, and the sources might be people
12 who work in hotels, people who work for lawyers, people who
13 work for various different aspects of a celebrity. A celebrity
14 might be using like, for example, a limousine service. We
15 develop sources. And that's really what makes a celebrity
16 reporter or celebrity editor or celebrity Editor-in-Chief. It's
17 important how valid their sources are, and they build this
18 entire source network.

19 Q. Thank you.

20 Does Dylan Howard still work at AMI, to your knowledge?

21 A. It's my understanding he doesn't work for them any
22 more.

23 Q. Are you still in touch with him personally?

24 A. No, I'm not.

25 Q. Do you know where he is living now?

Pecker - Direct/Steinglass

Page 923

1 A. It's my understanding he is living in Australia.

2 Q. Are you aware of any health conditions involving Mr.
3 Howard?

4 A. Yes.

5 MR. BOVE: Objection.

6 THE COURT: Overruled.

7 Q. I don't want to get too personal. Can you tell us a
8 little bit about what health conditions involving Mr. Howard you
9 are aware of?

10 A. From what I heard, is that he right now has a spinal
11 condition.

12 Q. And are you aware of whether it's possible for him to
13 travel internationally?

14 A. It's my understanding he can't.

15 Q. During your time working at AMI, were you familiar with
16 someone named Bonnie Fuller?

17 A. Yes, I was.

18 Q. And who was Bonnie Fuller?

19 A. Bonnie Fuller's history, she is a very famous editor
20 and she was hired by Jann Wenner when he purchased Us Weekly.
21 Bonnie Fuller was a celebrity editor and Jann Wenner hired her
22 and she turned the magazine around and it became the most
23 popular magazine in the country.

24 And, rather, American Media was just in the process of
25 competing against Bonnie Fuller and Us Weekly with my

Pecker - Direct/Steinglass

Page 924

1 magazines, which was the National Enquirer and Star, and she was
2 basically killing it. So I decided that to see if I could hire
3 Bonnie Fuller. And I approached her, and I was able to bring
4 her over from Wenner Media to become the Chief Editor of the
5 Star.

6 THE COURT: Can we stop at this point.

7 MR. STEINGLASS: Okay.

8 THE COURT: Jurors, we're going to call it a day.
9 I would ask you to please be back here in time for us to
10 start at 11 o'clock in the morning. Again, we're going to
11 work through lunch and we'll stop at 2 o'clock.

12 I am not going to repeat all of the admonitions, I
13 just gave them to you.

14 Basically, don't discuss this case either among
15 yourselves or with anyone else. Please continue to keep
16 an open mind as to defendant's guilt or innocence.
17 Please do not form or express an opinion as to the
18 defendant's guilt or innocence.

19 Put the case out of your mind. Don't think about
20 it. Don't talk about it. And don't read anything about
21 it.

22 Thank you.

23 I will see you tomorrow.

24 (Jury leaving courtroom.)

25 THE COURT: Please be seated.

Proceedings

Page 925

1 You can step out, sir.

2 THE WITNESS: Thank you.

3 (Witness leaving courtroom.)

4 ***

5 THE COURT: All right.

6 As you know, tomorrow morning we're going to have
7 our hearing at 9:30. If for some reason we're not done by
8 11, I expect that we will be, we'll pause it at that point
9 and we'll deal with the jury and then pick it back up after
10 that.

11 MR. STEINGLASS: Can we approach on scheduling
12 matters?

13 (Whereupon, a sidebar took place between the court
14 and counsel:)

15 MR. STEINGLASS: So I think you told the jury that
16 we were working on Monday, but I thought the Court had
17 asked --

18 THE COURT: Yes, I will correct that.

19 MR. STEINGLASS: That was number one.

20 Number two, I think you might have also said we
21 were breaking early on Tuesday, the 30th. I am not sure
22 that anyone is asking for that. My understanding is Mr.
23 Stern isn't coming in that day at all.

24 MS. NECHELES: There is no seder.

25 THE COURT: We can work all day. I will advise

Proceedings

Page 926

1 the jury of that.

2 MR. STEINGLASS: Great.

3 MS. NECHELES: Thank you.

4 THE COURT: We do have one juror -- I believe we
5 have one juror who observes the holiday. We can find out
6 from her if she needs to leave at 2.

7 MR. STEINGLASS: My understanding is, I think I
8 can speak with a little bit of authority on this point,
9 for that day it's either all or nothing. With that
10 holiday, it's either the juror wouldn't be able to come in
11 at all or they will be able to stay until 5. There is
12 nothing about leaving early that day.

13 THE COURT: We will clarify.

14 MR. BOVE: I have a few applications with respect
15 to Mr. Pecker.

16 THE COURT: Sure.

17 (Whereupon, the following occurred back in open
18 court:)

19 MR. BOVE: First of all, during the testimony this
20 morning, being mindful of the Court's practice and ruling
21 about not speaking objections, we objected to some
22 testimony from Mr. Pecker about the whereabouts of Dylan
23 Howard.

24 I wanted to amplify that objection and move to
25 strike the testimony. It was hearsay. He doesn't have

Proceedings

Page 927

1 firsthand knowledge of those facts, and it was also
2 irrelevant.

3 THE COURT: Irrelevant?

4 MR. BOVE: Yes, Judge.

5 MR. STEINGLASS: First of all, potential
6 unavailable hearsay is admissible.

7 Second of all, whether or not it's irrelevant
8 depends on what arguments defense intends to make, and it
9 also could be foundational for some arguments that we
10 intend to make.

11 I don't think it's irrelevant in any way. I do
12 think it's appropriate to elicit hearsay solely as to the
13 question of the witness's availability.

14 MR. BOVE: The question of witness availability
15 for that hearsay exception, Judge, is for you, and you make
16 that determination outside the presence of the jury. It's
17 not relevant to what the jury is considering. They're not
18 being asked to evaluate that exception. And so that is our
19 position.

20 THE COURT: Thank you.

21 Your objection is noted.

22 Anything else?

23 MR. STEINGLASS: No thank you.

24 MR. BOVE: Yes.

25 There are a few other things that we expect will

Proceedings

Page 928

1 come up during the testimony of Mr. Pecker. We thought we
2 could raise them now if the Court has the time.

3 THE COURT: Sure.

4 MR. BOVE: One relates to the issue with the
5 limiting instruction that the Court distributed this
6 morning relating to Mr. Cohen. I think it's likely a
7 similar issue will present itself during the testimony of
8 Mr. Pecker, and in particular with respect to AMI's
9 resolution with the U.S. Attorney's Office for the Southern
10 District of New York. We think the same limiting
11 instruction, you know, modified to change out Mr. Cohen and
12 to add AMI is appropriate. We will ask for that at the
13 right time.

14 MR. STEINGLASS: That's reasonable.

15 THE COURT: Is the email instruction that I
16 drafted, is that acceptable?

17 MR. BOVE: Judge, we think it would need to be
18 modified slightly. If we can take some time this afternoon
19 to make a proposal to the Court.

20 THE COURT: I would ask both sides to submit new
21 proposals. Please get it to me by this afternoon.

22 MR. BOVE: The next issue relates to the potential
23 for testimony about polygraphs administered to Mr. Sajudin.
24 I think he may be the only one. The Court ruled in limine
25 that evidence relating to the polygraph administered to

Proceedings

Page 929

1 Stormy Daniels was inadmissible. We think that the logic
2 of the ruling should apply with equal force to any
3 testimony from Mr. Pecker regarding the polygraph to Mr.
4 Sajudin.

5 MR. STEINGLASS: We're not intending to elicit
6 that.

7 THE COURT: There you are.

8 MR. BOVE: Thank you.

9 Next, we think it's likely that the government
10 will offer evidence of some newspaper articles during the
11 testimony of Mr. Pecker. Some from the National Enquirer.
12 Also, at least one, maybe two, from the Wall Street
13 Journal. When those are offered, we would ask that the
14 limiting instruction be provided, that they're not being
15 offered for the truth, and to explain to the jury the
16 admissibility purposes for which they're being used at
17 trial.

18 MR. STEINGLASS: I'm not sure that is the
19 appropriate time to give that instruction. I would like
20 to think about that.

21 But, obviously, they're not being admitted for
22 their truth, and so it may be appropriate at some point to
23 inform the jury of that.

24 THE COURT: If you could give me a sense of what
25 these articles would be.

Proceedings

Page 930

1 MR. STEINGLASS: Well, I think there are two
2 categories. One we discussed at some length in the motions
3 in limine last Monday, which were the articles in the
4 National Enquirer, at least the headlines in the National
5 Enquirer, the pro-Trump headlines and the anti-opponent
6 headlines.

7 I think Mr. Bove mentioned that we intend to
8 elicit two Wall Street Journal articles, one from
9 November 4, 2016, and the other from January 12, 2018.
10 Those are also coming in for the facts and the dates of
11 their publications, but not for truth of the matters
12 asserted in any of those articles. So we have no
13 objection to some type of instruction at the appropriate
14 time.

15 THE COURT: So the purpose for which you are
16 offering them is to establish the date and the fact that
17 it's published?

18 MR. STEINGLASS: And what the revelations were in
19 those articles. Not because they're true, but because of
20 the effect they had on the campaign for the articles that
21 came out prior to the election, and for the cover-up, for
22 the article that came out in January of 2018, kind of
23 unmasking the Stormy Daniels deal.

24 THE COURT: All right. So you can submit your
25 proposed language later on and you can indicate what its

Proceedings

Page 931

1 intended purpose is for so I could read it to the jurors.

2 MR. BOVE: Thank you, Judge. We will do that.

3 The last issue relates to some records that I
4 think will be offered through the testimony of Mr. Pecker
5 or through a subsequent custodian from AMI. They fit into
6 two categories, as I understand it, a set of emails and a
7 set of text messages.

8 Without prejudging the testimony, I would not be
9 shocked if Mr. Pecker can lay a business records foundation
10 for some or all of those materials. Certainly if he can't,
11 I would be shocked if the custodian couldn't achieve that.

12 Especially in light of Mr. Howard's absence at
13 this trial, there are some complicated and embedded hearsay
14 issues in the documents. Mr. Pecker is participating in
15 some of the text message exchanges. He is also
16 participating in some of the emails. Those are not
17 complicated.

18 The ones where he is not a participant, there is
19 embedded hearsay issues that will need to be addressed.
20 We don't want to necessarily slow down the witness's
21 testimony when those come in as business records in front
22 of the jury, but at some point, particularly with respect
23 to communications that Mr. Pecker is not a party to, we
24 would like to be heard on the other hearsay issues they
25 raise.

Proceedings

Page 932

1 MR. STEINGLASS: This is a short issue. We can
2 address evidentiary issues when they arise, but I don't
3 believe there is a requirement that in order to be a
4 business record that the witness be a party to the
5 communications. So, like I said, we could address these
6 issues when they arise.

7 MR. BOVE: Just to clarify the issue, the
8 government can lay a foundation that a text message between
9 Mr. Howard and a third party comes in as a business record.
10 That text message communication is a business record.
11 There's still an embedded hearsay issue with respect to the
12 factual assertions in the text messages coming in for the
13 truth or not. That is the issue that is more tricky and
14 requires more analysis. The business record foundation
15 doesn't alleviate that issue.

16 My point is, when Mr. Pecker is on the stand, if
17 all that is going to be happening, communications are going
18 to be coming into evidence based on the business records
19 foundation, and some would be displayed to the jury when
20 Mr. Pecker is a party, I don't think that is complicated.

21 On the other hand, if the government contemplates
22 putting in text messages from Mr. Howard to third parties
23 who have not testified yet and may not testify, and to
24 display them to illustrate a narrative during the
25 testimony of Mr. Pecker, that would be much more

Proceedings

Page 933

1 complicated, and we would ask to be heard at that time or
2 whatever time the Court thinks is appropriate.

3 THE COURT: Let's discuss it now.

4 MR. BOVE: I can go exhibit by exhibit.

5 THE COURT: You can show me a couple of exhibits,
6 I really just want to hear your legal argument.

7 MR. BOVE: So, for example, Government's Exhibit
8 163 is a string of November 2015 emails between people I
9 understand to be AMI employees, Sharon Churcher, Barry
10 Levine and Dylan Howard. So, as I said, I expect one way
11 or the other the government to lay a business records
12 foundation that that email thread can come in, not for the
13 content of the statements but for the fact that AMI
14 maintained an email system that allows those to come in.
15 There are factual assertions in that email that are made by
16 hearsay declarants, none of whom are going to testify at
17 the trial, so those factual assertions in the email cannot
18 come in for the truth.

19 When I say it is a little bit tedious, but there
20 are several emails like this, and many, many sets of text
21 messages like this. I am not suggesting the government is
22 doing anything wrong here, but we would like to flag it
23 because it does raise some complex issues that are going to
24 need to be addressed.

25 MR. STEINGLASS: Let me just say briefly that this

Proceedings

Page 934

1 is kind of a detailed analysis, and I am glad to hear about
2 it now, although it would have been better if we heard
3 about it a months ago when we provided those exhibits and
4 we could have hashed some of these things out in motions in
5 limine, which we have passed the motions in limine
6 deadline. That being said -- in order to get an advanced
7 ruling.

8 That being said, I understand what Mr. Bove is
9 saying, and I think there are certain portions of some of
10 the emails or texts that would come in but not for the
11 truth. I do think that is kind of a case-by-case analysis.
12 My suggestion is that Mr. Bove give us the proposed
13 portions of these emails and texts that he believes should
14 not be coming in for the truth. We can see if we agree
15 about some of them. For example, the one that Mr. Bove
16 just mentioned, which would be People's Exhibit 163, there
17 is a portion of that email chain in which there is a
18 detailed recitation of the Dino Sajudin story. Although
19 that should come in because it informs what happened
20 afterwards, we're not intending to argue that that is
21 coming in for the truth of the matter asserted. So that is
22 an example where I think we could agree, and there are
23 probably many others.

24 THE COURT: Mr. Bove, what I would ask you to do
25 is identify the email or the email threads that you are

Proceedings

Page 935

1 referring to, consult with the prosecution, see what you
2 can sort out, and then come to me with anything that you
3 can't come to an agreement on.

4 MR. BOVE: Thank you. And we will.

5 Just on the timing issue, we want to use your
6 Honor's time efficiently, but, I think, as the Court is
7 aware, we learned that Mr. Pecker would be called as a
8 witness yesterday at about 3.

9 THE COURT: I am not aware of what time it was.

10 MR. BOVE: That's the first time the government
11 told us about it.

12 THE COURT: Anything else from the defense?

13 MR. BOVE: No, your Honor.

14 Thank you.

15 THE COURT: From the People?

16 MR. STEINGLASS: No. Thank you, Judge.

17 THE COURT: Is there anything else that you would
18 like to submit or you would like me to consider before we
19 have our hearing tomorrow at 9:30?

20 MR. BOVE: Just on the contempt motion?

21 THE COURT: Yes.

22 MR. BOVE: No, your Honor.

23 Thank you.

24 MR. CONROY: Nothing additional at this point.

25 Can we approach for a moment on that?

Proceedings

Page 936

1 THE COURT: Sure.

2 (Whereupon, a sidebar took place between the
3 court and counsel:)

4 MR. CONROY: I guess I was wondering if we should
5 put a witness on tomorrow for the various truths. It's not
6 clear to me whether there is an objection to those coming
7 in based on the papers that we received.

8 THE COURT: You consent to the introduction of
9 posts?

10 MR. CONROY: Yeah, I'm just trying to figure out
11 how the hearing would work out tomorrow, if we should have
12 witnesses.

13 THE COURT: You have to meet your burden. It's up
14 to you how you are going to do that.

15 How long do you think it will take to present your
16 case?

17 MR. CONROY: Thirty-five minutes maybe.

18 THE COURT: Okay.

19 MR. CONROY: Somewhere between 30 minutes to an
20 hour.

21 THE COURT: Are you going to present anything?

22 MR. BOVE: We may amplify some of the legal
23 arguments that we made in the briefing. So subject to
24 seeing what comes in in testimony, our plan is not to offer
25 anything additional.

Proceedings

1 THE COURT: Let's be sure we start at 9:30 sharp.

2 MR. CONROY: Thank you.

3 THE COURT: Thank you.

4 Have a good night.

5 (Whereupon, the trial in this matter stood

6 adjourned to Tuesday, April 23, 2024, at 9:30 a.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25